

## **WAYNE COUNTY RULES OF CIVIL PROCEDURE**

Passed By Wayne County Bar Association Effective January 1, 2008.

## **LR89-TR3.1-001 WITHDRAWAL OF APPEARANCE**

All withdrawals of Appearance shall be in writing and by leave of court. Permission to withdraw shall be given only after the withdrawing attorney has given his or her client ten (10) days written notice of his or her intention to withdraw and has filed a copy of such with the court or upon a simultaneous entering of Appearance by new counsel for said client. The letter of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client's case or a default judgment may be entered against him, whichever is appropriate, and other pertinent information such as a pending trial setting date or any other hearing date. Such letter of withdrawal shall be sent to the client via both certified mail -return receipt requested and first class mail, postage pre-paid. The certificate of service attached to the required motion for leave to withdraw must indicate compliance with both forms of mail to the client and to all counsel of record or the request shall be denied. The court will not grant a request for withdrawal of appearance unless the same has been filed with the court at least ten (10) days prior to the trial date, except for good cause shown.

## **LR89-TR5-002 FILING**

### **A. Filing and Submission Only to the Clerk.**

All papers presented for filing shall be submitted to the Clerk and not to the court.

### **B. Separate Motions and Order; Order by Chronological Case Summary Entry Form; Service.**

Proposed orders shall be prepared and filed separately from the pleadings, petitions, motion or other papers to which they have reference.

Orders, either routine in nature or uncontested including, for example, those setting or continuing a hearing, shall be effected by the chronological case summary entry only, which shall contain the concise substance of the order.

All orders shall be accompanied with sufficient copies so that copies may be mailed to all parties.

### **C. Counsel to Furnish Pleadings to Special Judge.**

When a Special Judge who is not a Wayne County Judge is selected and qualifies in a case, copies of all filings subsequent to the qualification of such Special Judge shall be delivered in person, by mail, or by facsimile to the office of the Special Judge with certificate of forwarding same made a part of the filing.

## **LR89-AR12-003 FACSIMILE FILING**

Facsimile filing is permitting in the Wayne Circuit and Wayne Superior Courts. If the filing requires immediate attention of the Judge, it shall be so indicated in bold letters in an

accompanying transmittal memorandum. Facsimile filing must be through the Clerk's central reception number (765-973-9250). Legibility of documents and timeliness of filing is the responsibility of the sender.

Any documents filed by facsimile which seek an Order of Court must be accompanied by a copy of a proposed order. Such proposed order must contain the requesting party or attorney's facsimile number in the distribution list. If the Court adopts the proposed order and certifies that an emergency exists, the Clerk shall return such Order to sender by facsimile. Upon receipt of the Court's Order, sender shall serve it upon all parties or counsel of record by facsimile or First Class U.S. Mail and file an acknowledgment of receipt and Certificate of Service via facsimile to the Clerk's central reception number on the form below:

Cause No.

Acknowledgment and Certificate of Service:

I acknowledge receipt of the following order or request from the Court:  
\_\_\_\_\_ and certify that I have served a copy of the  
Court's Order or request upon the following parties or counsel of record:  
\_\_\_\_\_ via: facsimile transmission; First Class, U.S. Mail

Firm Name

Attorney's Name, Address & Telephone

Attorney's Number

## **LR89-TR06-004 MOTIONS**

### **A. Preparation.**

All pleadings, motions, briefs, and other papers shall be prepared in accordance with the provisions of the Indiana Rules Of Procedure.

### **B. Continuances And Enlargements of Time.**

All motions for continuance or enlargement of time (whether 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.) shall be made in writing, shall state whether or not opposing counsel objects to the motion, and shall state whether prior continuances or enlargements have been requested by either party and whether such prior request was granted. The Court may require any written motion for continuance or enlargement of time to be signed by the party requesting the continuance.

### **C. First Enlargement of Time.**

The first motion for enlargement of time to file a responsive pleading to a Complaint shall be granted summarily for up to forty-five (45) days. Any request for additional time beyond forty-five (45) days or a subsequent request for enlargement of time shall be at the discretion of the Court.

D. Title Of Motion.

All motions for continuance or enlargement of time shall denominate in the title of such motion whether it is the first, second, third, etc. motion for continuance or enlargement of time; e.g. Defendant's Second Motion For Enlargement Of Time To File Answer.

E. Proposed Orders To Accompany All Motions.

All motions seeking an Order of the Court shall be accompanied by a sufficient number of proposed Orders to be executed by the Court in granting the motion. Proposed Orders continuing a matter or granting an enlargement of time shall not set forth the new date but shall leave the date blank for the Court to complete.

**LR89-TR55-005      DEFAULT JUDGMENT.**

Upon the proper filing of a motion for default judgment pursuant to Trial Rule 55, the Court shall enter default and set the matter for damages hearing. The moving party may then file any Affidavit (of indebtedness or otherwise) in support of its claim for damages or judgment. It is not necessary that the moving party or such party's counsel attend the damages hearing. If the amount of damages or judgment is contested at the damages hearing the Court will then set the matter for further hearing at a later date and further evidence may be presented.

**LR89-TR37-006      SANCTIONS.**

If a party who has been properly served fails to appear at a contempt hearing, the Court shall not proceed but shall upon request by the moving party cause to issue a Rule To Show Cause Order ordering the non-moving party into court to answer as to why he/she failed to appear and why he/she should not be held in contempt of court. If the non-moving party again fails to appear in court as ordered after being properly served with the Rule To Show Cause Order, a Writ Of Body Attachment shall be issued for the non-moving party.

**LR89-TR73-007      ORAL ARGUMENT.**

The granting of a motion for oral argument, unless required by the Indiana Rules Of Procedure, shall be discretionary with the Court.

**LR89-TR40-008 TRIAL READINESS CERTIFICATE (TRC)**

A. TRC.

Any party may request the scheduling of a bench trial by filing a Trial Readiness Certificate (TRC) that certifies that the cause is ready to be scheduled for trial, that discovery has been finalized or will be finalized by the court ordered discovery cut off date heretofore set, and that no continuance of any trial date so scheduled will be requested for the purpose of filing any pleading or motion now reasonably contemplated, pursuing further discovery proceedings, securing attendance of any witness or party, or for any reason now reasonably foreseeable.

B. Request of Response.

A party filing a TRC may request that the other party file a TRC within thirty (30) days. Such request shall be made on the TRC. The party requested to file a TRC within thirty (30) days shall file a TRC within such time unless within such thirty (30) day period an application for enlargement of time showing good cause is filed.

C. Failure to Timely Respond.

In the event a party requested to file a TRC within thirty (30) days fails to timely file a TRC or a motion for enlargement of time within which to file a TRC, the court may summarily proceed to schedule a pre-trial and trial date with or without a praecipe being filed by the requesting party.

D. Form.

Trial Readiness Certificates (TRC's) shall be in the form set forth in Appendix "A". TRC's not in such form may be summarily denied.

**LR89-TR16-009 PRE-TRIAL PROCEDURE**

A. Setting of Pre-Trial Conference.

1. *Jury Trials.* In those cases where a jury has been requested, a preliminary pre-trial conference shall be set approximately six (6) months prior to the trial date. A preliminary pre-trial conference will be set upon the filing and approval by the court of an Agreed Case Management Order pursuant to Rule 11. A final pre-trial conference shall be set approximately thirty (30) to forty-five (45) days prior to the trial date.

2. *Bench Trials.* In those cases to be tried to the court, a preliminary pre-trial conference will not be set unless requested by a party or otherwise ordered by the court. Final pre-trial conference shall be set approximately thirty (30) to forty-five (45) days prior to the trial date as arranged by the Court.

B. Filing of Pre-Trial Statements.

At least forty-eight (48) hours prior to both the preliminary and the final pre-trial conferences, counsel for each party shall file Pre-Trial Statements which shall include all matters deemed important to the trial of the cause, but must include all information set forth in Paragraph "C" below.

C. Form of Pre-Trial Statement.

The pre-trial statement shall contain the following statements in separate numbered Paragraphs as follows:

1. JURISDICTION. Setting forth the basis of jurisdiction.
2. STATUS OF RECORD. Setting forth the pleadings raising the issues.
3. PENDING MOTIONS AND OUTSTANDING DISCOVERY. Setting forth the motions or other matters requiring action by the Court and a concise statement as to the status of discovery.
4. STATEMENT OF POSITION. Setting forth a concise statement as to each party's position.
5. STIPULATIONS. Setting forth a concise statement of stipulated facts.
6. ISSUES OF FACT. Setting forth a statement of the issues of fact which remain to be litigated at trial.
7. ISSUES OF LAW. Setting forth a concise statement of the issues of law on which there is agreement and which remain to be litigated at trial.
8. EXHIBITS. Setting forth each exhibit which shall be presented at trial.
9. AMENDMENTS TO PLEADINGS. Setting forth a concise statement as to whether or not there are any amendments to the pleadings.
10. PROBABLE SETTLEMENT. Setting forth a concise statement as to settlement negotiations and the likelihood of settlement.
11. PROBABLE TRIAL TIME. Setting forth a concise statement as to the anticipated length of trial.
12. LIST OF WITNESSES. Setting forth a numbered list of trial witnesses which shall include each witness's address. Expert witnesses shall be so designated.

D. Failure To File Pre-Trial Statement.

In the event either party should fail to timely file a Pre-Trial Statement as required by this Rule, the Court shall have the right to cancel the pre-trial conference and/or the trial or to enter appropriate sanctions against the party failing to file such Pre-Trial Statement.

E. Preliminary Pre-Trial Conference.

The primary purposes of the preliminary pre-trial conference are to determine whether or not the case is ready to proceed to trial by jury as scheduled and to determine the procedure to prepare the case for trial. Once a case is determined at the preliminary pre-trial conference to be ready to proceed to jury trial as scheduled, a continuance of such date will not be granted except for extraordinary circumstances which were not reasonably foreseeable at the preliminary pre-trial conference. Such reasons shall not include the need to file further pleadings or motions, pursuing or completing further discovery, securing attendance of any witness or party, or any other reasonably foreseeable reason.

F. Final Pre-Trial Conference.

The primary purpose of the final pre-trial conference are to determine the procedure to prepare the case for trial and to discuss these matters set out in Rule 16 of the Indiana Rules of Trial Procedure.

G. Attendance By Trial Counsel Required.

The primary purpose of the final pre-trial conference are to determine the procedure to prepare the case for trial and to discuss these matters set out in Rule 16 of the Indiana Rules of Trial Procedure.

H. Pre-Trial Order.

Following the pre-trial conference, a pre-trial order shall be entered in compliance with Rule 16(J) of the Indiana Rules of Trial Procedure.

I. More Than One Pre-Trial Conference.

If necessary or advisable, the Court may adjourn the pretrial conference from time to time or may order additional Pre-Trial Conferences as it deems appropriate.

**LR89-TR40-010 CASE MANAGEMENT CONFERENCE & ORDER AND SETTING OF PRE-TRIAL AND TRIAL DATES**

A. Mandatory Case Management Conference.

A case management conference shall be required in all cases where a jury trial is requested.

B. Discretionary Case Management Conference.

A case management conference may be ordered in any other case upon the filing of a motion by any party or on the court's own motion.

C. Conference Procedure.

Within one hundred twenty (120) days of the filing of a Complaint in those cases where a case management conference is mandatory, or within thirty (30) days after otherwise being ordered to participate in a case management conference, the Plaintiff shall arrange a meeting of all parties for the following purposes:

1. *List of Witnesses.* Exchange preliminary lists of witnesses known to have knowledge of the facts supporting the pleadings. The parties shall thereafter be under a continuing obligation to advise opposing parties of other witnesses as they become known. The parties shall establish a date by which any testifying expert witness must be disclosed.
2. *Documents.* Exchange all documents which are contemplated to be used in support of the pleadings. Documents later shown to have been reasonably available to a party and not exchanged may be subject to exclusion at the time of trial.

3. *Other Evidence.* Exchange any other evidence reasonably available to obviate the filing of unnecessary discovery motions.
4. *Mediation and Settlement.* Discuss the likelihood of settlement of the action and the date, if any, by which mediation shall occur.
5. *Discovery Schedule.* Agree upon a schedule for all discovery including a date by which discovery shall be finalized and completed.
6. *Complicated Case.* Discuss whether the action is sufficiently complicated so that additional conferences may be required.
7. *Additional Parties.* Discuss the date by which any motion to join additional parties must be filed.
8. *Pre-Trial Motions.* Discuss and agree upon the dates by which any motions to dismiss, motions for summary judgment, and other motions shall be filed. It shall not be necessary to include the date for filing motions in limine as motions in limine are to be filed at least fifteen (15) days prior to trial pursuant to LR89-TR-006.
9. *Anticipated Trial Readiness Date.* Discuss the date by which the parties reasonably anticipate the case will be ready for trial.
10. *Estimated Length of Trial.* Discuss the length of time the parties reasonably anticipate the trial will take to complete.

D. Case Management Order.

Within ten (10) days after meeting, but within one hundred eighty (180) days of filing the Complaint, those attending are to file an Agreed Case Management Order setting forth:

1. The likelihood of mediation and settlement;
2. A detailed schedule of discovery for each party, including an agreed upon date by which discovery shall be completed and finalized;
3. A limitation on the time to join additional parties and to amend the pleadings;
4. A limitation on the time to file all pre-trial motions, excluding motions in limine;
5. A preliminary estimate of the time required for trial;
6. The date by which the parties reasonably anticipate the case will be ready for trial; and



7. Any other matters which the parties believe may be helpful to the Court.

E. Setting of Pre-Trial and Trial Dates In Cases Where Jury Requested.

Upon the filing of an Agreed Case Management Order pursuant to this Rule, which is thereafter approved by the court, preliminary pre-trial, pre-trial, and trial dates shall be set by the Wayne County Court Scheduling Office. The preliminary pre-trial conference shall be set approximately six (6) months prior to the scheduled trial date with the final pre-trial conference scheduled approximately thirty (30) to forty-five (45) days prior to the scheduled trial date. At the preliminary pre-trial conference, all counsel shall be prepared to discuss whether the case remains ready to proceed to trial.

**LR89-TR16-011 MOTIONS IN LIMINE, JURY INSTRUCTIONS, AND JUROR QUESTIONNAIRE**

A. Motions in Limine.

Any Motion in Limine shall be filed so that it is actually received by the Court at least fifteen (15) days prior to trial, or longer as the Court may order.

B. Objections To Motions In Limine.

Objections to any Motions In Limine shall be submitted to the Court in writing and shall be submitted at least seven (7) days prior to trial. Written objections shall be numbered and shall specify distinctly and with clarity the objectionable matter to the Motion in Limine. Each objection shall be accompanied by citations of authority.

C. Agreed Upon Fact Instruction.

Counsel shall submit to the Court an agreed upon fact Instruction so that it is actually received by the Court at least fifteen (15) days prior to trial, or longer as the Court may order.

D. Proposed Jury Instructions.

Counsel may submit proposed jury instructions to the Court, provided that such instructions are actually received by the Court at least fifteen (15) days prior to trial, or longer as the Court may order. Instructions covering matters occurring at the trial which could not reasonably be anticipated may be tendered and/or substituted at the conclusion of the trial. Each proposed instruction shall be accompanied by citations of authority.

E. Objections to Proposed Jury Instructions.

Objections to proposed jury instructions may be submitted to the Court in writing and shall be submitted at least seven (7) days prior to trial. Written objections shall be numbered and

shall specify distinctly and with clarity the objectionable matter in the proposed instruction. Each objection shall be accompanied by citations of authority.

F. Juror Questionnaires.

In all cases, the Juror Questionnaire Form in Appendix B shall be used unless all parties consent to a proposed juror questionnaire which shall be tendered jointly and shall actually be received by the Court at least fifteen (15) days prior to trial, or longer as the Court may order. In no cases shall a proposed juror questionnaire be in excess of a single one-sided typed 8½x11 page without leave of the Court.

**LR89-AR1-012 RANDOM FILING OF CIVIL CASES**

A. Random Filing.

Civil filings in Wayne Circuit, Wayne Superior Court No. 1 and Wayne Superior Court No. 2 shall be assigned to said courts by way of random selection process but in such a way that each court receives roughly the same number of filings of each type of category (i.e., adoptions, civil miscellaneous, civil plenary, civil torts, domestic relations, estates, guardianships, mental health, protective orders, etc.)

B. Exempt Filings.

Paternity filings shall be exempt from the random selection process.

C. Captions to Contain Blanks.

Captions of all proposed initial pleadings shall contain blank spaces where appropriate to enable the Clerk to enter the identity of the receiving court and its cause number.

D. Transfer of Cases to Balance Case Load.

The judges of the Wayne Circuit Court, Wayne Superior Court No. 1, and Wayne Superior Court No. 2 shall periodically review the filing patterns and reserve the right to transfer cases in the event of a disproportionate distribution of cases in order to balance the caseload and expedite dispositions of all pending cases.

**LR89-TR79-013 SPECIAL JUDGE SELECTION IN CIVIL CASES**

In the event a special judge is required to be selected pursuant to Rule 79(D), (E), or (F) or requiring selection pursuant to Local Rule, this Rule shall control. A special judge shall be designated by the Clerk of the Wayne Circuit and Superior Courts in sequence from the following courts, to-wit:

1. The presiding Judge of the Wayne Circuit Court;

2. The presiding Judge of the Wayne Superior Court No. 1;
3. The presiding Judge of the Wayne Superior Court No. 2;
4. The presiding Judge of the Fayette Circuit Court;
5. The presiding Judge of the Fayette Superior Court;
6. The presiding Judge of the Franklin Circuit Court;
7. The presiding Judge of the Randolph Circuit Court;
8. The presiding Judge of the Randolph Superior Court;
9. The presiding Judge of the Rush Circuit Court; and
10. The presiding Judge of the Union Circuit Court.

The Clerk shall maintain such records as necessary to assure that selections are rotated in the above sequence.

#### **LR89-TR00-014 ATTORNEYS FEES IN CIVIL CASES**

##### **A. General Provisions.**

RULE 1.5 of the Rules of Professional Conduct adopted by the Supreme Court of Indiana shall govern the awarding of attorneys fees in civil actions. All fees charged by attorneys must be reasonable. Factors which the Wayne Circuit and Superior Courts will consider in determining attorney fee awards in civil cases include:

1. The time and labor required, the novelty and difficulty of questions involved, and the skill requisite to perform the legal service properly;
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee customarily charged in the locality for similar legal service;
4. The amount involved and the results obtained;
5. The time limitations imposed by the client or by the circumstances;
6. The nature and length of the professional relationship with the client;
7. The experience, reputation and ability of the lawyer or lawyers performing the services.

Attorneys fees are to be based upon those factors as set forth above and other relevant factors. At the appropriate time in the proceeding, attorneys shall submit a Verified Affidavit in support of the request for attorneys fees setting forth: facts in support of such request; a detailed list of the services and time expended on the matter to date; the amount of time expected to be expended in the future through to completion, including collection; the attorney's customary and usual hourly fee; and all other relevant facts in support of the request. All fees, if any, shall be awarded at the time of Judgment and not at a future date unless authorized specifically by statute.

B. Mechanics Liens.

In cases involving mechanics liens, the Court will find as reasonable attorney fees, unless there is evidence to the contrary, the following:

- to \$1,500.00 for the first \$10,000.00 of judgment (or any portion thereon);
- to 5% of the next \$15,000.00;
- to 3% of the next \$25,000.00;
- to 1-1/2% of the next \$50,000.00;
- to 1% of the next \$150,000.00;
- to 1/2% of everything over \$250,000.00.

The above fees shall include conferences with client, preparation of notices, complaint and summons, obtaining judgment, and reasonable collection efforts. In instances where additional fees are requested, the attorney shall file a Verified Petition/Affidavit which details the services and times expended thereon and includes those matters referred to in Rule 1.5 of the Rules of Professional Conduct.

C. Other Written Instruments Including Leases, Notes, and Contracts.

In all cases where instruments provide for attorney's fees, or such fees are provided for by statute, except real estate mortgage foreclosure and mechanics liens, the Court will find as reasonable attorneys fees, unless there is evidence to the contrary, the following:

<u>Amount of Debt</u>	<u>% fee to be awarded</u>
The first \$3,000.00	33-1/3%
The next \$10,000.00	17%
The next \$12,000.00	8%
Excess of \$25,000.00	3%

The above fees shall include conferences with client, preparation of notices, complaint and summons, obtaining judgment, and reasonable collection efforts. In instances where additional fees are requested the attorney shall file a Verified Petition/Affidavit which details the services and times expended thereon and includes those matters referred to in Rule 1.5 of the Rules of Professional Conduct.

**Appendix A**

STATE OF INDIANA            )  
  )SS:  
COUNTY OF WAYNE        )  
  
IN THE WAYNE \_\_\_\_\_ COURT  
  
20\_\_\_\_ TERM  
  
CAUSE NO. 89\_\_\_\_-\_\_\_\_-\_\_\_\_-\_\_\_\_

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Plaintiff(s),  
  
v.  
  
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Defendant(s).  
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**TRIAL READINESS CERTIFICATE**

As attorney for \_\_\_\_\_, I certify that this cause is ready to be scheduled for trial, and that no continuance from any trial date so scheduled will be requested by me or on behalf of \_\_\_\_\_ to file any pleading or motion, pursue further discovery proceedings, secure attendance of any witness or party, or for any reason now reasonably foreseeable.

TIME REQUIRED TO COMPLETE TRIAL: \_\_\_\_\_

Request \_\_\_\_\_ counsel to respond within thirty (30) days.

\_\_\_\_\_

Attorney for \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of this document, by placing the same in the United States Mail, postage prepaid, on \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

**Appendix B**  
**WAYNE COUNTY, IN JUROR QUESTIONNAIRE**

Dear Prospective Juror: Your name has been drawn by random selection for jury service from state and local government records. The full cooperation of every Citizen is necessary if our system of justice is to function fairly and efficiently. You are required to answer and return this Questionnaire within 10 days after receiving it. Refusing to answer or making untruthful answers could result in fine, imprisonment, or both for contempt of court.

PLEASE PRINT CAREFULLY

NAME: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

HOME PHONE: \_\_\_\_\_ WORK PHONE: \_\_\_\_\_

EDUCATION: Highest grade completed/degree received \_\_\_\_\_ MIL. TO COURTHOUSE (round trip): \_\_\_\_\_

**EMPLOYMENT AND/OR SCHOOL**

(please check all that apply)

Current Employer (or last employer if not currently employed) \_\_\_\_\_

☐ Employed    ☐ Unemployed  
☐ Self-Employed    ☐ Part-Time  
☐ At Home    ☐ Retired  
☐ Student    ☐ Other

Address \_\_\_\_\_

Your job or occupation \_\_\_\_\_

MARITAL STATUS: ☐ Single    ☐ Married    ☐ Widowed    ☐ Divorced    ☐ Separated

Name of Spouse \_\_\_\_\_

Spouse's Occupation \_\_\_\_\_

Number of Children Living at Home \_\_\_\_\_

**YOUR EXPERIENCE WITH THE LAW**

Have you ever been a victim, witness, plaintiff, or defendant in a criminal or civil suit? ☐ Yes    ☐ No

If yes, explain: \_\_\_\_\_

Have you, a family member, or a close friend ever been in a serious traffic accident? ☐ Yes    ☐ No

Was alcohol involved? ☐ Yes    ☐ No

Who was injured? ☐ Yourself    ☐ Family Member(s)    ☐ Other(s)    ☐ No one

Have you ever been convicted of a misdemeanor other than traffic violations? ☐ Yes    ☐ No

If yes, please state, what crime and location of conviction \_\_\_\_\_

Have you ever been seated on a jury? ☐ Yes    ☐ No If yes, date when last served \_\_\_\_\_

Have you or a family member ever worked for any of the following (Please check all that apply)

☐ Law Enforcement Agency    ☐ Court System    ☐ Corrections/Detention System    ☐ Other (law enforcement)

If so, please describe \_\_\_\_\_

**BACKGROUND**

Are you a United States Citizen? YES \_\_\_\_\_ NO \_\_\_\_\_

Do you read, speak and understand English? \_\_\_\_\_

Are you physically or mentally able to carry out the functions of a juror? ☐ Yes    ☐ No

If no, explain: \_\_\_\_\_

Do you live in Wayne County? \_\_\_\_\_ If so, for how long? \_\_\_\_\_

If you do not live in Wayne County, do you authorize the cancellation of your voter's registration? \_\_\_\_\_

- If serving as a juror would create an extreme inconvenience or hardship, you can address that issue to the judge during the jury selection process.
- If you believe that you would be unable to be a juror for medical reasons, please send your doctor's certificate explaining why with this form.
- If you are summoned for jury service, you must appear. Failure to comply with the summons is punishable through a contempt of court action.

I affirm, under the penalties for perjury, that the foregoing representations are true.

Date \_\_\_\_\_ Signature \_\_\_\_\_

**WAYNE COUNTY RULES OF CRIMINAL PROCEDURE**

**Effective January 1, 2008**



## **RULES OF WAYNE COUNTY**

### **CRIMINAL RULES**

#### **LR89-CR00-001. SCOPE**

These rules govern the procedure and practice of criminal cases in Wayne Circuit and Superior Courts unless otherwise provided by law or rules of the Supreme Court of Indiana or by other local rules, and are effective as of January 1, 2008.

#### **LR89-CR00-002. RELEASE FROM CUSTODY - PROMISE TO APPEAR**

A. A person arrested and incarcerated without a warrant shall be released from custody within forty-eight (48) hours of arrest unless a judicial determination of probable cause for arrest has been obtained.

B. A person arrested and incarcerated shall be permitted to post bail consistent with the Court's bail schedule unless otherwise ordered or communicated to the Sheriff by a judge.

C. Prior to release of a person pursuant to the 48 hour rule or upon posting bail, the person must complete a verified promise to appear, on a form approved by the courts, indicating his or her full name, date of birth, address, place of employment, home and work telephone numbers, social security number and promise to appear in the Court and at the time designated by the Sheriff. A copy of the Promise to Appear shall be provided to the arrested person and to the Court upon designation. The Promise To Appear is Form 1 in the Appendix.

D. Failure to appear as promised upon release from custody is cause for issuance of an arrest warrant.

E. All persons arrested and incarcerated shall be brought before the Court in which charges are filed within a reasonable period of time.

#### **LR89-CR00-003. APPOINTED COUNSEL**

A. A defendant who is financially unable to obtain counsel is entitled to appointed counsel in accordance with this rule, except in misdemeanor cases where the prosecution is not seeking a sentence of incarceration. If the court appoints counsel, the defendant will be notified of the name, address and telephone number of appointed counsel .

B. If a defendant states that he or she is financially unable to obtain counsel, the Court will examine the defendant as to financial circumstances and may require financial

statements and/or investigation of the defendant's financial circumstances. If the investigation reveals that the defendant is financially unable to obtain counsel, the Court will appoint counsel.

C. At the time of the initial hearing, a defendant, for whom counsel is not appointed or for whom counsel has not entered an appearance, will be scheduled for a hearing regarding counsel and will be ordered to appear for said hearing. The defendant shall be instructed to contact attorney(s) in order to determine the costs of privately retained counsel and to report back to the Court at the time of the hearing regarding his or her efforts and progress in retaining private counsel. A list of attorneys who have notified the Courts that they may consider representing criminal defendants and receive payment in installments shall be provided to a defendant upon request. Attorneys willing to consider providing representation under such an arrangement shall advise the Court Administrator in writing so as to be included on the list.

D. If the Court finds that the defendant is able to pay part of the cost of representation by appointed counsel, the Court may order the defendant to pay an appropriate sum to the Clerk of the courts to be deposited into the county's supplemental public defender services fund.

E. The Court may order a person for whom a public defender has been appointed to perform community service during pre-trial release to compensate the county for the value of Public Defender services.

F. Notwithstanding the provisions of this rule, the Court may appoint counsel for any person at any stage of the proceedings to prevent a failure of justice.

#### LR89-CR00-004. APPEARANCE OF COUNSEL

A. Any attorney representing a defendant shall appear for such defendant immediately upon being retained or appointed by signing and filing an appearance in writing containing counsel's name, attorney number, address, telephone number, and a statement indicating whether counsel will accept service by fax. A copy of this appearance shall be served on the prosecution.

B. The Prosecuting Attorney of Wayne County may have a standing appearance form filed with the Clerk of the Wayne Circuit, Superior 1, Superior 2, and Superior 3 Courts which shall be deemed of record and applicable in all pending criminal cases, save and except when an individual appearance form is filed by the State of Indiana in a given case.

#### LR89-CR00-005. WITHDRAWAL OF COUNSEL

A. *All withdrawals of Appearance by privately retained counsel shall be in*

*writing and by leave of court. Permission to withdraw shall be given only after the withdrawing attorney has given his or her client ten (10) days written notice of his or her intention to withdraw and has filed a copy of such with the court or upon a simultaneous entering of Appearance by new counsel for said client. The letter of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client's case or default judgment may be entered against him, whichever is appropriate, and other pertinent information such as a pending trial setting date or any other hearing date. Such letter of withdrawal shall be sent to the client via both certified mail-return receipt requested and first class mail, postage pre-paid. The certificate of service attached to the required motion for leave to withdraw must indicate compliance with both forms of mail to the client and to all counsel of record or the request shall be denied. The court will not grant a request for withdrawal of appearance unless the same has been filed with the court at least ten (10) days prior to the trial date, except for good cause shown. The Court shall have discretion to grant a Motion To Withdraw if the Court finds that the Defendant is properly notified although by means that are not in strict compliance with this rule.*

B. If the motion to withdraw is granted, the Court will determine whether the then existing financial circumstances of the defendant necessitate the appointment of counsel. If so, counsel shall be appointed forthwith so as to obviate delay in the proceedings. If the defendant is not qualified for appointed counsel, the defendant shall be ordered to pursue the retention of alternate counsel and to report back to the Court within not less than fourteen days the results of all efforts made to retain another attorney.

#### LR89-CR00-006. INITIAL HEARING/PRE-TRIAL CONFERENCE

A. Initial hearing shall be conducted in accordance with Indiana Statutes and Criminal Rules.

B.

#### LR89-CR00-007. PRE-TRIAL CONFERENCE

A pre-trial conference will be scheduled at the initial hearing which shall require personal attendance by the Prosecutor's Office, defense counsel and the defendant. Failure of the defendant to appear may result in revocation of a bond, an increase in bail, and/or the issuance of a warrant.

#### LR89-CR00-008. WAIVER OF JURY TRIAL

Jury trials shall only be waived by the defendant in open Court and/or by written Waiver signed by Defendant and by defense counsel.

LR89-CR00-009. CRIMINAL DISCOVERY

The Wayne County Courts shall have Discovery consistent with applicable law. Neither the State nor the defense shall be required to file any Discovery documents or pleadings with the Court, but the parties are permitted to do so.

Neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having properly discoverable information (except the accused) to refrain from discussing the case with opposing counsel, nor shall they otherwise impede opposing counsel's investigation of the case.

. LR89-CR00-010. STIPULATIONS

All stipulations shall be reduced to writing, signed by counsel and by the defendant personally, unless made during the course of a hearing or trial in open Court.

LR89-CR00-011. SELECTION OF JURY PANEL

A list of the petit jurors called for the trial of a particular case shall be available not less than four business days prior to the trial date.

When jury panels have been drawn, the bailiff shall cause the Court's questionnaire to be sent to each member of such panels to be answered and returned by such persons at least one business day prior to the commencement of jury selection. Such completed jury questionnaires are confidential and may only be obtained or examined by attorneys of record. Requests to supplement the Court's jury questionnaire shall be made in writing, prior to the final pretrial conference and shall include a verbatim proposed questionnaire.

LR89-CR00-012. VOIR DIRE

The prosecutor and defense shall have an opportunity to question each prospective juror and observe questioning of the prospective juror by opposing counsel prior to passing or striking a prospective juror. Peremptory challenges shall be made in writing at the bench. If a prospective juror is stricken by both sides, each side is chargeable for the strike. A juror not stricken may

become a member of the trial jury. A challenge for cause can be raised at any time. The Court may put time limitations on jury questioning.

LR89-CR00-013. FILING PROCEDURE FOR CRIMINAL CASES

A. Misdemeanors are filed in Wayne Superior Court III unless the misdemeanor accompanies a felony charge filed in Wayne Circuit Court, Wayne Superior Court I, or Wayne Superior Court II.

B. The following felonies shall be filed in Wayne Superior Court III, unless at least one Class C, B or A felony (other than those filed under I.C. 9-30-5 or 9-30-6) or Murder, is also filed against the same defendant in the same Information or Indictment:

1. Battery, a class D felony, filed under I.C. 35-42-2-1.
2. Domestic Battery, a Class D Felony, filed under I.C. 35-42-2-1.3.
3. Possession of Marijuana, Hash Oil or Hashish, a Class D Felony.
4. All offenses filed under I.C. 9-30-5.
5. All offenses involving the operation of a motor vehicle while driving privileges are suspended, restricted, or forfeited.

C. If the defendant:

1. has at least one pending criminal case, or
2. is on probation

in Circuit Court, Superior Court I or Superior Court II, then any felony charges brought against the same defendant, other than those felony charges listed at (B)(1-5), are to be filed in the court having jurisdiction over the matter referred to at (C)(1) OR (C)(2).

D. If the defendant:

1. has at least one pending felony case, and/or
2. is on formal felony probation

in Superior Court III, then any Class D Felony charges brought against the same defendant shall be filed in Wayne Superior Court III.

E. Except as otherwise dictated by paragraph (A), (B), (C) or (D), criminal cases shall be filed in a random and equal manner in Circuit Court, Superior Court I and Superior Court II.

F. If the Judge or personnel of a Court are required as witnesses in any case, the case shall not be filed in that Court, and the Clerk shall cause that case to be randomly filed in a different Court, unless otherwise excepted by this rule.

G. When the State of Indiana chooses to re-file a dismissed case, the case shall be assigned to the Court from which the dismissal was taken. This rule applies to all charges arising out of the same offense report, arrest report, or set of operative facts.

H. Upon the granting of a change of judge or the disqualification or recusal of a judge, a successor or special judge shall be assigned as follows:

Initial Judge	Successor/Special Judge
Circuit Court	Superior Court 1
Superior Court 1	Superior Court 2
Superior Court 2	Circuit Court
Superior Court 3	On an equal and rotating basis from among the Judges of Circuit Court, Superior Court 1 and Superior Court 2

I. In order to provide for an appropriately balanced case load and appropriate use of court resources, the Judges of the Wayne County Courts may, from time to time, transfer cases to other courts within Wayne County. Transfer of cases shall be by written order of the forwarding court, and shall be subject to written consent by the Judge of the receiving Court.

J. If unusual and unforeseen circumstances occur, deviation from the provisions of this rule may be obtained for a particular case with the approval of the Courts.

LR89-CR00-014. BAIL

A. Setting Bail. The Court will set the amount of bail that the accused shall be

required to post. Warrant arrests may include the amount of the bail on the face of the warrant or on the order directing the Clerk to issue the Warrant. Prosecution requests for arrest warrants shall include any prosecution's recommendation regarding bail amount and the reasons therefor. Where charges are filed subsequent to arrest, the probable cause affidavit or oral probable cause submission shall include any prosecution's recommendation as to the appropriate bail.

B. Filed motions for re-determination of bail will be given scheduling priority by the Courts.

C. Automatic 10% Cash Bonds: A 10% cash bond is authorized by the Court for individuals charged with Class D and/or C Felonies.

A defendant charged with a misdemeanor or a Class D and/or C Felony for whom bail has been set, may satisfy the requirement of bail by depositing ten percent (10%) of the amount of the bail in cash with the clerk of the Court or the Sheriff of Wayne County as security for the full amount of the bail.

A defendant applying for 10% cash bail must make, under affirmation, an application on a form approved by the Court. Such form is listed as Form 2 in the Appendix.

D. CRIMINAL BAIL SCHEDULE (if bail is not otherwise set by Court):

The Bail schedule listed below is a presumptive Bail Schedule range that the Wayne Circuit, Wayne Superior Court 1 and Wayne Superior Court 2 shall use:

Offenses Against Persons: I.C. 35-42 *et seq.*

Murder			<b>No bail authorized</b>
Class A Felony	\$25,000.00	to	<b>\$75,000.00</b>
Class B Felony	\$15,000.00	to	<b>\$50,000.00</b>
Class C Felony	\$ 7,500.00	to	<b>\$25,000.00</b>
Class D Felony	\$ 5,000.00	to	<b>\$15,000.00</b>

Offenses Against Property: I.C. 35-43 *et seq.*

Class A Felony	\$15,000.00	to	<b>\$50,000.00</b>
Class B Felony	\$10,000.00	to	<b>\$35,000.00</b>
Class C Felony	\$ 5,000.00	to	<b>\$20,000.00</b>
Class D Felony	\$ 2,500.00	to	<b>\$10,000.00</b>

Offenses Relating to Controlled Substances: I.C. 35-48-4 *et seq.*

Class A Felony	\$15,000.00	to	<b>\$40,000.00</b>
Class B Felony	\$15,000.00	to	<b>\$30,000.00</b>
Class C Felony	\$ 7,500.00	to	<b>\$15,000.00</b>
Class D Felony	\$ 5,000.00	to	<b>\$ 7,500.00</b>

Other Offenses Not Categorized Above

Class A Felony	\$ 6,000.00	to	<b>\$60,000.00</b>
Class B Felony	\$ 4,500.00	to	<b>\$45,000.00</b>
Class C Felony	\$ 3,000.00	to	<b>\$30,000.00</b>
Class D Felony	\$ 1,500.00	to	<b>\$25,000.00</b>

The scheduled above is established as a general guide for the Wayne County Courts (except Wayne Superior III) in setting bail for persons charged with bailable offenses.

The Sheriff of Wayne County shall use maximum amount for non-warrant arrests until the initial hearing, whereupon the Court has discretion to revise the amount of the bail.

Nothing in this schedule shall prevent the Court from setting above or below the range provided in this schedule or from admitting an individual defendant to release upon recognizance.

The Bail Schedule in this paragraph shall apply to all cases filed in Wayne County courts other than Wayne Superior Court 3.

Bonds shall be increased 50% for persons admitted to bail on a separate Felony case or who is charged as a Habitual Offender or a Habitual Substance Offender. The Prosecution shall include such fact in its Affidavit of Probable Cause or Charging Information.

E.

The Wayne County Superior Court 3 shall post its current bond schedule in the courtroom of Wayne Superior Court 3, shall provide a copy of its current bond schedule to the Wayne County Sheriff, and such bond schedule shall be available for review in the Wayne Superior Court 3 offices.

The \$5.00 bonding fee (death benefit fee) is to be added to surety and cash bonds on all misdemeanor and truck violations. The fee is not to be added to felony charges.



The Clerk shall retain from the cash bond such administrative fees as are authorized by law.

CRIMINAL RULES

FOR WAYNE CIRCUIT COURT, WAYNE SUPERIOR COURT NO.1,  
WAYNE SUPERIOR COURT NO. 2, and WAYNE SUPERIOR COURT NO. 3

It is ordered that the preceding rules be, and the same are, hereby adopted as the, criminal rules of the above named Courts, to be and remain in full force and effect on and at all times after January 1, 2008, and until the further order of the Courts, and all rules heretofore adopted are hereby rescinded.

It is further ordered that these rules be spread of record in the General RJO of each of the above Courts and that they be printed and distributed to members of the Wayne County Bar, and two copies thereof transmitted to the Clerk of the Indiana Supreme Court and Indiana Court of Appeals.

David R. Kolger,  
Judge, Wayne Circuit Court

P. Thomas Snow  
Judge, Wayne Superior Court No. 1

Gregory A. Horn  
Judge, Wayne Superior Court No. 2

Darrin M. Dolehanty  
Judge, Wayne Superior Court No. 3

## APPENDIX

Form 1: Promise To Appear

Form 2: Personal Appearance Bond With Percentage Cash Deposit

# Form 1

Date & Time Booked In \_\_\_\_\_

Date & Time Released \_\_\_\_\_

## WAYNE CIRCUIT AND SUPERIOR COURTS

### APPEARANCE FORM

Full Name: \_\_\_\_\_

Present Address: \_\_\_\_\_

(Street)

(Apartment No.)

(City)

(State)

(Zip)

Phone No.: \_\_\_\_\_ Social Security No.: \_\_\_\_\_

DOB: \_\_\_\_\_ Driver's License No.: \_\_\_\_\_

Employer's Name and Address: \_\_\_\_\_

Current Charge: \_\_\_\_\_

I (am) (am not) presently on bond on another charge (of \_\_\_\_\_  
\_\_\_\_\_ pending in \_\_\_\_\_).

### PROMISE TO APPEAR

The undersigned hereby certifies that the above information is true.

I promise to appear in the Wayne \_\_\_\_\_ Court (No. \_\_\_\_\_) on the \_\_\_\_\_

(A.M.)(P.M.). I understand that a bench warrant for my arrest will be issued if I fail to appear at said time and place.

I affirm under the pains and penalty for perjury that the foregoing information is true.

Dated: \_\_\_\_\_

Signature

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

**PERSONAL APPEARANCE BOND  
WITH PERCENTAGE CASH DEPOSIT**

I, the undersigned Defendant, understand that the bail has been set to assure my appearance in the above Court when ordered; I accept the option to deposit ten per cent (10%) of the amount of bail in cash with the Clerk.

I understand that I am bound to the State of Indiana in the full amount of the bail set in the sum of \_\_\_\_\_ dollars; (\$\_\_\_\_\_). If I appear in Court as directed and comply with all conditions as ordered by the court until this case is finished, then this bond shall be released; if otherwise, the bond shall remain in full force.

If I do not appear at any time fixed by the Court, the Court may declare this bond forfeited, and notice shall be mailed to me and \_\_\_\_\_ at the addresses given below. Unless the Court finds there was justification for my failure to appear, the Court may immediately enter judgment against me for the full amount of the bail. The cash deposit, less an administrative fee, shall be applied to the judgment, and the balance of the judgment may be enforced and collected in the same manner as a civil judgment.

If I fail to appear as required, or violate any condition of my release from custody, the release may be revoked and a warrant for my arrest may be issued immediately.

I agree that, as conditions for my release from custody, I will:

- (a) inform my attorney and the court of any change in address or employment within 72 hours of such change;
- (b) personally appear in this cause in any Court in Wayne County at which my appearance is required by the Court. Notice by the court to my attorney of record shall constitute notice to me;
- (c) comply with all other conditions of release as ordered by the Court.

When the conditions of the bond have been performed, unless the Court orders otherwise, the Clerk shall retain those fees required by the Court and return the balance of the cash deposit to the undersigned defendant. However, if judgment for fees, fines, costs, restitution or any other obligations is ordered by the court, the remaining cash bond shall be first applied by the Clerk to the payment of the above judgment, upon court order.

I affirm under the pains and penalties that the foregoing information is true and correct.

\_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
Printed Name of Defendant

\_\_\_\_\_  
Defendant's Address

Dated: \_\_\_\_\_

I have read and understand this agreement. I acknowledge that any monies provided by me to the defendant belong to the defendant and shall be applied as set forth above.

\_\_\_\_\_  
Signature of Person Providing Cash Funds to Defendant

\_\_\_\_\_  
Printed Name of Person Providing Cash Funds to Defendant

\_\_\_\_\_  
Address Person Providing Cash Funds to Defendant

Dated: \_\_\_\_\_

WAYNE COUNTY LOCAL RULES OF FAMILY LAW

Passed By Wayne County Bar Association Effective October 30, 1997

as amended by the Wayne County Bar Association effective January 1, 2008

## **LR89-FL00-1 : SCOPE AND TITLE**

- A. Scope. These Rules shall govern the procedure and practice of all family law and domestic relations matters in the Wayne Circuit and Superior courts unless otherwise provided by law or rules of the Supreme Court of Indiana. These Rules are in addition to and are not intended to replace the Wayne County Local Civil Rules of Court. In the event of a conflict in a family law or domestic relations matter, the Wayne County Family Law Rules shall apply.
- B. Title. These Rules shall be known as the Wayne County Rules of Family Law and shall be cited as LR89-FL00-1, et. seq.

## **LR89-FL00-2 : ADMINISTRATIVE PROCEDURES**

- A. Advise of Time Required. Parties shall advise the Court in the text of any preliminary or contempt petition if the matter cannot be heard on the regularly scheduled docket and shall provide an estimate of the time required in the event that more than fifteen minutes is necessary.
- B. Summary Hearing. All issues and evidence relevant to a preliminary hearing may be presented in summary fashion by each party, by counsel if represented.
- C. Copies of Decree Required. When submitting a Final Decree and Property Settlement, the parties shall submit sufficient copies of each for the Court to retain an original and copy of each and provide copies to all counsel of record.
- D. Bench Warrant. In order to obtain a bench warrant from the Court, a party must have personal service on the adverse party and complete a bench warrant on copy service with sworn testimony confirming actual notice to the adverse party.
- E. Summons. In all relevant family law matters, the petitioner shall use the form of summons set forth in Appendix A.

## **LR89-FL00-3 : SPECIFIC DISCLOSURE REQUIREMENTS**

Prior to any preliminary hearing or within thirty days after service of any petition seeking relief in any family law matter, whichever shall first occur, each party shall provide the Court and the opposing party with written notice of any other pending legal proceeding in which such person is a party wherein the other pending legal proceeding involves an issue or allegation of domestic violence, spousal abuse, child abuse, protective order, restraining order, Child(ren) in Need of Services, Termination of Parent-Child Relationship, Juvenile Delinquency, or any criminal charges. The written notice should include the cause number of the legal proceeding, identification and location of the Court, names of the parties involved, and a brief summary of the nature of the legal proceeding.

## **LR89-FL00-4 : COOPERATION IN FAMILY CASES**

- A. Liberal Construction and Application.
1. The Courts of Wayne County are committed to a cooperative model for the handling of family cases by parents, attorneys, and judges. This Rule will be liberally construed and applied to serve the healthy and child-sensitive functioning of families.

2. "Family cases" are defined as all marital dissolution or separation, paternity, guardianship, termination of parental rights, delinquency, and child in need of services (CHINS) cases.

3. The adoption of this Rule is not intended to affect lawyers' duty to act with reasonable diligence and promptness in representing a client. See Indiana Rule of Professional Conduct 1.3 and its commentary.

B. Case Captioning.

1. Parties in marital dissolution and separation and paternity cases shall not be captioned or designated as "petitioner," "respondent," "plaintiff," or "defendant."

2. In marital dissolution and separation cases where the parties have one or more children under the age of twenty-one on the date of the initial filing, all pleadings shall be captioned, "In Re The Marriage of \_\_\_\_\_, Father [or Mother], and \_\_\_\_\_, Mother [or Father]." The party filing the initial petition shall be named first.

3. In marital dissolution and separation cases without children under the age of twenty-one on the date of the initial filing, all pleadings shall be captioned, "In Re The Marriage of \_\_\_\_\_, Wife [or Husband], and \_\_\_\_\_, Husband [or Wife]." The party filing the initial petition shall be named first. Following dissolution, parties without children shall be captioned and designated "former husband" and "former wife."

4. Parties in paternity cases shall be captioned and designated as "mother," "putative father," and "father."

C. Duties of Attorneys and Parties in Family Cases.

1. Attorneys and parties in family cases shall be responsible to act with the Courts as co-problem solvers, not mere problem reporters.

2. The Courts expect all parties and attorneys to consistently observe:

a. personal responsibility by acting on one's own opportunities to solve problems and improve circumstances rather than merely reporting on the alleged fault in others,

b. cooperation by sensibly defining and pursuing the best interests of all family members,

c. courtesy by constant observance of respectful language and behavior, and

d. focused attention on children's needs including an awareness that parent conflict is gravely dangerous to children.

3. Attorneys appearing in family cases shall (a) furnish their family clients with a



copy of this Rule and (b) assist them in fully understanding and observing its provisions.

D. Website Work.

1. In marital dissolution and separation cases, parents with one or more children under the age of twenty-one on the date of their initial petition may be ordered to complete the work on [www.UpToParents.org](http://www.UpToParents.org) and take their completed work to any case-related appointment, whether it be a parenting class, attorney conference, court, mediation, etc. Parents open to the possibility of reconciliation may substitute the work from [www.WhileWeHeal.org](http://www.WhileWeHeal.org).

2. In paternity cases, parents may be ordered to complete the work on [www.ProudToParent.org](http://www.ProudToParent.org) and take their completed work to any case-related appointment, whether it be a parenting class, attorney conference, court, mediation, etc.

3. Parents may be ordered to merge their chosen Commitments from their website work into a set of Agreed Commitments, review those Agreed Commitments, and take copies of them to any hearing or other case-related appointment.

4. The Agreed Commitments and other result generated as a result of the website work shall be inadmissible and unenforceable in the event litigation is required. The purpose of the website work is to generate a culture of co-parenting for the long-term benefit of families.

E. Protocols for Motions and Hearings.

1. Parties and counsel shall make every reasonable effort to resolve problems by reaching agreements that serve the best interests of all family members and should appear in court on contested matters only in rare circumstances after every reasonable effort to resolve problems has been made.

2. Except in instances where it would be dangerous or otherwise unreasonable to do so, counsel and parties without counsel shall use good-faith personal or telephonic consultation to resolve any issue before seeking relief from a court. In that mandatory consultation, counsel shall:

a. attempt to resolve the matter at issue;

b. discuss, and make a list of, the resources they believe the parents could use to resolve current and future issues and to build cooperation (separate lists shall be made if a joint list is not agreed on);

c. if previously ordered by the Court, confirm that the parents (i) have completed the website work referred to in paragraph D, (ii) have merged their chosen Commitments into a set of Agreed Commitments, and (iii) will review and bring their Agreed Commitments and any other website work to any upcoming case-related appointment; and

d. confirm the date each parent completed the assigned parenting class.

3. All motions and pleadings filed by counsel and parties without counsel (including

any requests for provisional relief) shall include a Cooperation Update confirming compliance with each of the requirements in paragraph E(2), including the date of each parent's attendance at the required parenting class.

4. To the extent that the filing date of a particular motion triggers certain rights and obligations, strict compliance with subsection E(2) may be excepted so long as the moving party indicates that a Cooperation Update is not included in said motion due to the importance of the filing date. In such cases, the moving party shall be required to comply with subsection E(2) and file a Cooperation Update within seven days of the date of filing.

5. Failure to comply with this section may result in the denial of relief or hearing until compliance is ensured.

6. If previously ordered by the Court, parents shall review and bring to every hearing a copy of their Agreed Commitments and current Parenting Planning Worksheet.

F. Status Conferences.

1. A status conference may be requested at any time, and one will ordinarily be scheduled by the Court for approximately sixty days after the filing of the initial petition for dissolution, for separation, for the establishment of paternity, and for modification, approximately sixty days after the finding of paternity. The moving party shall provide with his/her initial pleading a proposed Notice of Status Conference, leaving the date and time blank.

2. Any request for a status conference which is not the automatic sixty-day conference shall comply with subsection E(2) and contain a Cooperation Update. Said request shall further indicate the moving party's proposed agenda for such status conference.

3. The chief purposes of status conferences will be (a) for attorneys (and parties without attorneys) to report on progress in reducing conflict, building cooperation, preserving family relationships, and responding to the needs of the children, (b) for families, where required, to be referred for any necessary help, and (c) for attorneys (and parties without attorneys) to report on discovery issues.

4. Parties or their attorneys shall consult in advance of the status conference and present suggestions for the future course of the case that would serve the best interests of all family members.

5. Additional status conferences should be requested whenever parties or counsel believe they would be helpful in reducing conflict, building cooperation, preserving relationships, or protecting children.

G. Additional Assistance to Families.

1. At any time parties need resources to reduce conflict, build cooperation, preserve family relationships, or respond to the needs of their children, they and their attorneys, if any, should make arrangements to find the resources that could help them.

2. If parents nevertheless continue to have conflict and appear in court without an agreement about the resources they will use, the Court may select the resources the parents will be ordered to use.

H. Requests for Trial Settings.

1. Trial settings must be requested in writing in compliance with Wayne County Rule of Civil Procedure LR89-TR00-009. In addition to complying with the requirements of Wayne County Rule of Civil Procedure LR89-TR00-009, the trial setting request must give a detailed account of (i) all unresolved issues and (ii) what problem-solving resources (including counseling and mediation) the parties have used to reach cooperative agreements. Failure to comply with this section may result in the denial of a trial setting.

I. Enforcement.

1. This Rule and the enforcement thereof appear contradictory. However, the benefits of the overall concepts contained in this Rule, as well as the recognized and hoped long-term advantages of implementing such a process, render its enforcement of vital importance, as families in conflict do not always fit well into the mold of the traditional adversary system. Nevertheless, it must be recognized that an attempt to reshape the model within which family law cases have traditionally occurred will require, on occasion, the use of those enforcement mechanisms which do not fall within a model of cooperation.

2. Courts may use, at their discretion, the variety of enforcement mechanisms available, including but not limited to the award of attorney's fees and sanctions, available to them in the traditional system.

J. Effective Date.

1. This Rule shall apply to all filings, in both new and pending cases, as of the effective date of the entirety of these Rules.

Commentary

*Family cases of all sorts (see paragraph (A)(2)) must be handled in ways that reduce conflict, build cooperation between parents, and protect children. The Courts of Wayne County will expect parties and attorneys to give consistent attention to those ends and will liberally construe and apply this Rule to serve those ends.*

*This Rule provides nine measures to promote the cooperation necessary to serve the best interests of all family members involved in family cases.*

*Cases will be captioned and parties will be designated in ways that better convey everyone's duty of cooperation. Parents will be designated as "mother" and "father" (or in some paternity cases as "putative father"), never as "petitioner" or "respondent." See paragraph B.*

*Attorneys and parties will be expected to consistently observe personal responsibility, cooperation, courtesy, and focused attention on children's needs. See paragraph C.*

*Parties may be, at the Court's discretion, referred for website work. See paragraph D.*

*Before filing motions or pleadings, attorneys are required to have a personal consultation on five matters: (a) an attempt to resolve by agreement the matter at issue; (b) a discussion of the resources parents could use to resolve current and future issues; (c) if ordered, confirmation that the parents have completed, and will bring to upcoming case-related appointments, their Agreed Commitments from their website work; and (d) confirmation of the parents' attendance at the parenting class. See paragraph E.*

*Counsel shall include a Cooperation Update on those five matters in their pleadings. See paragraph E.*

*If ordered to have completed the website work, parties must bring their Agreed Commitments and Parenting Plan Worksheet to all case-related appointments. See paragraph E.*

*The Courts will hold status conferences to hear counsel's suggestions for helping families cooperate and function better. Parties without attorneys will also participate in status conferences. See paragraph F.*

*Requests for trial settings must be in writing and substantially comply with Wayne County Local Rule of Civil Procedure LR89-TR00-009. In addition to the requirements of said rule, the request must account for past and future problem-solving alternatives to trial.*

#### **LR89-FL00-5 : PROVISIONAL HEARINGS**

A. In Non-Dissolution of Marriage Cases. The Court shall have the discretion to hold provisional hearings in non-dissolution of marriage cases and may grant relief where appropriate.

B. Child Support Worksheet. All Motions for Provisional Order seeking child support or a modification thereof shall be accompanied by a proposed Child Support Obligation Worksheet.

C. Time Allotted and Nature of Proceedings. Provisional hearings shall be scheduled in fifteen-minute increments, unless either party has indicated in his/her Motion for Provisional Hearing or Response thereto that additional time is required. Such indication that additional time is required further constitutes a waiver of the three-week scheduling requirement. Said proceedings shall be held in court chambers off the record. Either party may request in his/her Motion for Provisional Order that the proceedings be held on the record, which further constitutes a waiver of the three-week scheduling requirement. The Court shall have the discretion to grant or deny in whole or in part a request for an on-the-record evidentiary hearing exceeding fifteen minutes in length.

D. Attorney's Fees. Provisional attorney fees may be awarded based on the following factors:

1. The number and the complexity of the issues (e.g. custody dispute, complex asset valuation).
2. The nature and extent of discovery.
3. The time reasonably necessary for the preparation for or the conduct of

contested preliminary matters or final hearings.

4. Other matters requiring substantial expenditure of attorneys' time.
5. The attorney's hourly rate.
6. The amount counsel has received from all sources.
7. The ability of the opposing party to pay the requested fees and the disparity of income between the parties.

E. Preliminary Appraisal, Evaluator, and Accountant Fees. Appraisal, evaluator, or accounting fees may be allocated based on the following factors:

1. Itemized list of property to be appraised or valued (e.g., Defined benefit pension, business interests, business real estate, furnishings, vehicles, etc.).
2. An estimate of the cost of the appraisals and the basis therefore.
3. The amount of a retainer required and the reason an expert is necessary.
4. Whether the parties agree to a specific appraiser, evaluator, or accountant.

F. Provisional Child Support Orders. There is hereby created a rebuttable presumption that provisional child support orders shall be made retroactive to the first Friday following the date of filing of a written request for a provisional child support order. Such presumption may be rebutted upon a showing that such retroactivity is inappropriate under the facts of a particular case.

G. Exchange of Necessary Documentation. At least seven days before the scheduled provisional hearing, the parties shall exchange documentation of all year-to-date income (usually satisfied by the party's three most recent paystubs), whether there are subsequently born children, documentation of an order or duty of support for prior born children, documentation of maintenance paid, documentation of work-related child care expenses, documentation of the weekly cost of health insurance for the minor children, and a proposed child support obligation worksheet.

#### **LR89-FL00-6 : ORDERS EXCLUDING A SPOUSE FROM THE RESIDENCE**

A. Eviction Without Notice. A Restraining Order without notice pursuant to Ind. Trial Rule 65 which would evict a spouse from the marital residence may be issued only upon the following bases:

1. Strict compliance with Ind. Trial Rule 65; and
2. There are alleged specific facts indicating more than a generalized fear of an adverse action; and
3. There is independent, corroborated evidence of actual or threatened physical abuse sufficient to find a risk of imminent danger; and

4. The moving party is physically available to testify unless there is a showing of exceptional circumstances precluding his or her availability; and
5. The moving party certifies to the Court the reasons supporting the claim why notice cannot be given.

In addition to the foregoing criteria, the Court may consider any other relevant social or economic factors including whether either party has a reasonable alternative residence pending hearing on the provisional motion(s). In those circumstances where the Court allows a party to be heard ex parte on the record and finds an emergency exists justifying issuance of an eviction order, the cause shall heard within ten days with notice to all parties. Such an order shall, by its own terms, terminate effective the date and time of the hearing, unless extended by the Court after hearing evidence thereon. Furthermore, such an order shall terminate at the expiration of ten days from the date of said order if no hearing is held prior thereto.

B. Order. If an Order granting exclusive possession of the marital residence to one spouse is entered by the Court without hearing under this Rule, such Order shall contain the following language: "The \_\_\_\_\_ is hereby restrained from entering marital residence located at \_\_\_\_\_ and the Wayne County Sheriff's Department, Richmond Police Department, or other appropriate law enforcement agency shall use all reasonable force, including arrest, to remove a party from the premises upon presentation of such an Order."

C. Extraordinary Remedy. Any orders issued ex parte hereunder shall be considered an extraordinary remedy and should be considered only in emergency circumstances.

#### **LR89-FL00-7 : FINANCIAL DECLARATION FORM**

A. Requirement. In all relevant family law matters, including dissolution of marriage, separations, paternity, post-decree and support proceedings, each party shall prepare and exchange, respectively, within forty-five days of the initial filing of the action or within thirty days of the filing of any post-decree matters, a Financial Declaration Form (see Appendix B). These time limits may be extended or shortened by court order for good cause shown. With respect to post-decree modification actions, only Page 1 need be completed.

B. Exceptions. The Financial Declaration Form need not be exchanged if:

1. the parties agree in writing to waive exchange;
2. the parties have executed a written agreement which settles all financial issues;
3. the proceeding is one in which the service is by publication and there is no response;
4. the proceeding is post-decree and concerns issues without financial implications; provided, however, when the proceeding is a post-decree modification which necessarily implicates child support, this Rule shall still apply; or
5. the Court otherwise waives such requirement.

C. Admissibility. Subject to specific evidentiary challenges, the Financial Declaration Form shall be admissible into evidence.

D. Supporting Documents. For the purpose of providing a full and complete verification of assets, liabilities and values, each party shall attach to the Financial Declaration Form all information reasonably required and reasonably available. This shall include recent bills, wage and tax records, bank records, pension and retirement account information, and mortgage account records. The term “reasonably available” means that material which may be obtained by letter accompanied with an authorization, but such term does not mean material that must be subpoenaed or is in the possession of the other party. Appraisals of real estate or personal property, or pension valuations are not required. However, once an appraisal or valuation is obtained it must be exchanged. Further, the Court may direct that an appraisal or valuation be obtained, just as it may designate the appraiser or valuator. The Court may require either party to supplement the Financial Declaration Form with appraisals, bank records, and other evidence to support the values set forth in the Form.

E. Financial Declaration – Mandatory Discovery. The exchange of Financial Declaration Forms constitutes mandatory discovery. However, Indiana Trial Rule 37 sanctions do not automatically apply. In the event that a party does not timely submit his or her fully completed Financial Declaration Form and reasonable efforts have been made to informally resolve any such dispute, the party seeking compliance may file a Motion to Compel and [if desired] for Sanctions. If such Motion is granted, the Order shall set a deadline for compliance and schedule a hearing on potential sanctions. At said hearing, the Court may take into consideration the noncompliant party’s compliance with the Order to Compel in determining whether to award sanctions to the moving party. Additionally, pursuant to Indiana Trial Rule 26(E)(2) and (3), the Financial Declaration Form shall be supplemented if information changes or is added or if additional material becomes available. Any additional discovery such as Requests For Production, Interrogatories, or Depositions of the parties to the action shall not commence until the Financial Declaration Forms has been exchanged; provided, however, that if a party’s noncompliance has resulted in the filing of a Motion to Compel, the moving party may move forward with additional discovery reasonably necessary to obtain the information sought. Any further discovery shall not seek to obtain information already obtained by the Financial Declaration Form.

F. Privacy – Sealing Of Financial Declaration Form. Whenever the interest of privacy so requires, the Court may, upon proper Motion, direct that the Financial Declaration Form(s) be sealed until further order of the court. However, such request(s) shall not be made as a matter of course. When ordered sealed, the Court Reporter shall place the Financial Declaration Form(s) in a flat manner in an envelope of sufficient size, seal the envelope, and affix a copy of the Order directing that the Financial Declaration Form(s) be placed under seal. Financial Declaration Form(s) may be withdrawn at the conclusion of the case on such terms as the Court may allow.

G. Clerk To Provide Notice Upon Filing. Upon the pro se filing of any family law matter referred to in LR89-FL00-7(A), the Clerk shall provide to the moving party upon filing a Notice of the requirement of this Rule. Such Notice shall be in a form substantially as follows: “You are advised that each party is required to provide to the other party or his or her legal counsel, if applicable, a fully completed Financial Declaration Form with all required attachments within forty-five days of the filing of such petition/motion or, in the case of a post-decree petition/motion, within thirty days. You are further advised that copies of the Financial Declaration form may be obtained at the Clerk’s Office, located on the Second Floor of the Wayne County Courthouse, 301 East Main Street, Richmond, Indiana. They may also be found online at [http://www.in.gov/judiciary/localrules/current/wayne-circuit-superior-\(family\)-](http://www.in.gov/judiciary/localrules/current/wayne-circuit-superior-(family)-)

032305.pdf. Failure to timely provide a fully completed Financial Declaration Form with all required attachments may result in sanctions being entered against the party failing to comply with this Rule.”

#### **LR89-FL00-8 : HELPING CHILDREN COPE WITH DIVORCE**

A. Attendance at Class. Before final hearing is scheduled on a petition for Dissolution of Marriage, Petition for Legal Separation, or Petition to Establish Paternity in which the parties have minor children, each party must attend not less than one session on Helping Children Cope with Divorce.

B. Location of Class. The sessions will be conducted by Behavioral Health Care Associates, 831 Dillon Drive, Richmond, IN 47374, and will be held at their facility. There is also a class at the Connersville Dunn Center once a month. That address is 290 Erie Street.

C. Contact. Each party to the proceeding shall call Behavioral Health Care Associates at 765-983-8142 within twenty days from the filing of the petition for the purpose of registering for the program. Each party shall provide Behavioral Health Care Associates with the cause number of the proceeding when they place the call or by bringing it with them to the session.

D. Certificate. The moderator of each session will provide each attendee with a certificate of attendance, which must be filed with the Court's Clerk prior to the Court's granting the Petition for Dissolution of Marriage or Petition for Legal Separation.

E. Payment. Each party is responsible for payment to Behavioral Health Care Associates of the cost of that party's participation.

F. Child Not To Attend. Participants may not bring their children to these sessions. Class length is approximately 1-1 ½ hours.

G. Waiver. In those limited circumstances where it is apparent that a party's compliance with this rule cannot be compelled or is otherwise unnecessary, upon written motion, the Court may grant a waiver of its application.

H. Clerk to Provide Copies. The Clerk is directed to provide a copy of this rule to all petitioners or their attorneys at the time of the filing of any Dissolution of Marriage Petition, Petition for Legal Separation, or Petition to Establish Paternity if the parties have minor children, and attach a copy of this rule to such Petition to be served with Summons.

I. Motion to Compel Attendance. If one party has failed to attend the class as required, the complying party may file a Motion to Compel Attendance with the Court requesting that the Court enter an Order requiring the opposing party to attend the class by a date certain or be subject to contempt of Court. Appropriate sanctions may include, but shall not be limited to, attorney's fees, incarceration, or a finding that parenting time by said party might endanger the child(ren)'s physical health or significantly impair the child(ren)'s emotional development justifying a restriction on parenting time in accordance with Ind. Code 31-17-4-1 or Ind. Code 31-14-14-1.

#### **LR89-FL00-9 : MEDIATION**

No final hearing regarding dissolution of marriage, modification, custody, child support, or



parenting time which is anticipated to take more than thirty minutes of court time shall be set without the parties having first submitted a Notice to the Court (which may be incorporated in the Trial Readiness Certificate required under LR89-TR00-009) that they have engaged in mediation, either formal or informal, within the last six months regarding the matters to be set for hearing. "Formal mediation" is such mediation as contemplated by the Rules of Alternative Dispute Resolution. "Informal mediation" is intended to include any face-to-face meeting between the parties, whether such meeting includes attorneys only or the involvement of the parties who may or may not be separated, depending on the circumstances. In the event the parties cannot agree as to a location for informal mediation, such informal mediation shall be conducted in Wayne County, Indiana.

#### **LR89-FL00-10 : PARENTING TIME ORDERS**

The phrase "reasonable parenting time," if not specifically defined in the Court's order, is defined as the parenting time schedule outlined in the Indiana Parenting Time Guidelines. Parenting time orders may be informally adjusted by agreement of the parties without Court order to accommodate the needs of the family; however, intended long-term formal modifications should, to protect all parties, be reduced to writing and submitted to the Court by Petition or Stipulation and approved by the Court to become binding.

#### **LR89-FL00-11 : CHILD CUSTODY AND PARENTING TIME: REFERRALS FOR INVESTIGATION AND REPORT**

A. Motion. On motion of either party with the approval of the Court, or on the Court's own motion, contested matters involving child custody and parenting time may be referred to appropriate sources for investigation and report to the Court.

B. Admissibility. Subject to the provisions of Ind. Code § 31-17-2-12, all custodial evaluator reports or guardian ad litem reports which are court-ordered regarding custody and/or parenting time shall be admissible into evidence on the motion of either party without the evaluator needing to be present at the hearing. No part of this Rule is intended to supplant the right of either party to compel the attendance of the evaluator or other witnesses as set out in Ind. Trial Rule 45.

C. Physical and Mental Examination. In all contested family law matters involving child custody or visitation, the provision of Ind. Trial Rule 35 providing for the physical or mental examinations by a physician shall be extended to include examination and evaluations by a psychologist, therapist or other qualified evaluator upon order of the Court.

D. Parenting Coordinators. At the discretion of the Court and subject to availability, the Court may appoint parenting coordinators when appropriate.

E. Fees. There shall be a rebuttable presumption that the parties shall equally share the cost of any such referral ordered herein. Factors the Court may consider to deviate from an equal split of said fees include but are not limited to income disparity greater than 65%-35%, whether the referral provided the Court with information beneficial to the family as a whole, and whether the referral provided information confirming the moving party's position.

F. Termination of Guardian Ad Litem Appointment. Upon the entry of final Decree of Dissolution of Marriage, Legal Separation, Paternity, or Order of permanent modification of any custody, parenting time, and/or child support Order, the appointment of the Guardian Ad Litem

shall be deemed terminated unless otherwise ordered by the Court.

#### **LR89-FL00-12 : CONTACT WITH CUSTODIAL EVALUATORS AND GUARDIANS AD LITEM/COURT APPOINTED SPECIAL ADVOCATES**

A. Contact with Custodial Evaluators. In the event a custodial evaluation is ordered by the Court, the Court shall direct the parties to contact the custodial evaluator to arrange for an appointment with the custodial evaluator. Other than making contact with the office of the custodial evaluator to arrange for the client's appointment with the custodial evaluator, counsel shall not initiate contact or otherwise communicate with the custodial evaluator until the custodial evaluator's report has been issued. Prohibited contact or communication shall include the sending of school records, medical records, affidavits, reports, or any other type of written record by the attorney to the custodial evaluator. Information which may be requested by the custodial evaluator shall be delivered or otherwise presented to the evaluator by the party and not counsel. In the event the custodial evaluator should contact counsel before the evaluator's report has been issued, such fact should be promptly conveyed to opposing counsel indicating the specific dialogue between counsel and the custodial evaluator. Following the issuance of the evaluator's report, the evaluator shall be deemed a witness and counsel shall be permitted ex parte communication with the evaluator at counsel's/client's expense.

Whenever a Court orders a custodial evaluation the Court shall attach a copy of this Rule to its order and shall have the Clerk distribute such order and attached Rule to the designated custodial evaluator.

B. Contact with Guardians Ad Litem/Court Appointed Special Advocates. In the event a Guardian Ad Litem/Court Appointed Special Advocate is appointed by the Court, the parties' attorneys shall not communicate with said Guardian Ad Litem/Court Appointed Special Advocate unless said communication includes all other parties to the cause of action. In the event such inclusion is not feasible, the fact that there was communication and the nature thereof shall be disclosed to all other parties within seven days of such communication.

#### **LR89-FL00-13 : CHILD SUPPORT GUIDELINES**

A. Worksheet Required. In all proceedings involving child support, each party shall file with any settlement, or submit to the Court at any hearing or trial, an Indiana Child Support Obligation Worksheet(s) – one or more depending upon the facts. In any request for provisional order that contemplates any order for child support, a Child Support Obligation Worksheet - with supporting documentation such as a recent pay stub and/or an explanation in the body of the Motion as to how the figures were computed - shall be attached to either the Motion for Provisional Order or Affidavit in Support. A response Child Support Obligation Worksheet - with supporting documentation such as a recent pay stub and/or an explanation in the body of the Motion as to how the figures were computed - shall be provided to the other party or to opposing counsel, as the case may be, at least forty-eight hours prior to the provisional hearing, unless reasonable circumstances prevent doing so, and then such Child Support Obligation Worksheet shall be provided to the other party or to opposing counsel at the earliest opportunity. Child Support Obligation Worksheets shall be promptly supplemented if changes occur prior to trial. Child Support Obligation Worksheets intended to be introduced at trial or final hearing shall be exchanged by the parties or counsel, along with supporting documentation, at least seven days prior to trial.

B. Support Settlement Agreements. If an agreement concerning support provides any

deviation from the Guidelines, the parties shall present to the Court a written explanation, with supporting documentation, justifying the deviation. The proposed Order shall specifically state that the Court is deviating from the Child Support Guidelines and set forth the reasons for such deviation.

C. Required Language. All Orders requiring the payment of child support shall include the following language:

"In the event that an Income Withholding Order is in place and has been activated, child support shall be paid to the State Central Unit and sent to: State Central Collection Unit, Post Office Box 6219, Indianapolis, Indiana 46206-6219. Payment shall include the Cause Number of this case which is \_\_\_\_\_, the ISETS number which is \_\_\_\_\_, and the last four digits of the Payor's social security number. In the event that an Income Withholding Order is not in place or has not been activated and you are paying child support directly, your child support payment shall be paid in cash or by way of a Money Order or Certified Check to the Clerk of the Court. Please note on your Money Order or Certified Check the Cause Number of this case which is \_\_\_\_\_, the ISETS number which is \_\_\_\_\_, and the last four digits of the Payor's social security number. You should retain a copy of the Money Order or Certified Check for your records as proof of payment. Any payments for support and/or arrears made in a manner which does not conform to this paragraph shall be deemed gifts and shall not be credited toward the satisfaction of any obligation for current support and/or arrears."

D. Income Withholding Order Required. In all proceedings involving child support, an Income Withholding Order shall be submitted with any Settlement Agreement or Final Decree as may be required by statute or the parties shall:

1. Submit a written agreement providing for an alternative child support arrangement; or,
2. Provide within the proposed Decree that "the Court determines that good cause exists not to require immediate income withholding" and stating the specific reasons therefore.

#### **LR89-FL00-14 : MODIFICATION OF POST-DECREE CHILD SUPPORT ORDERS**

There is hereby created a rebuttable presumption that modification of post-decree child support orders shall be made retroactive to sixty days following the filing of the petition for modification.

In cases where a change of child custody is involved, there shall be a rebuttable presumption that modification of post-decree child support orders shall be made retroactive to the date of filing of the petition for modification or the date of the de facto change in custody, whichever is later.

#### **LR89-FL00-15 : AGREED ENTRIES**

An agreed entry shall not be approved by the Court without a Petition or Stipulation having first been filed. A Petition or Stipulation for Agreed Entry shall specifically set forth the basis and reasons for such Petition or Stipulation which meets the statutory requirements for the same.

#### **LR89-FL00-16 : EXHIBITS**

In all family law cases, trial exhibits for the originally initiating party shall be marked as numbers and trial exhibits for the originally responding party shall be marked as letters.

#### **LR89-FL00-17 : FEES**

A. Attorney Fees. Attorney fees may be awarded based on evidence presented by way of Affidavit (or oral testimony if the Court shall allow) at the final or other hearing. The Affidavit shall include an itemized statement of the requested fee. Affidavits shall be admissible into evidence by the Court. The following factors may be considered and should be included in any Affidavit submitted to the Court:

1. The number and the complexity of the issues (e.g. custody dispute, complex asset valuation).
2. The nature and extent of discovery and the parties' cooperation therewith (or lack thereof).
3. The time reasonably necessary for the preparation for or the conduct of contested preliminary matters or final hearings.
4. The extent to which either party encouraged or discouraged settlement without protracted litigation.
5. Other matters requiring substantial expenditure of attorney's time.
6. The attorney's hourly rate.
7. The amount counsel has received from all sources.
8. The ability of the opposing party to pay the requested fees and the disparity of income between the parties.

The Court shall have the discretion to award no, partial, or full attorney's fees.

B. Contempt Citation Attorney Fees. There shall be a rebuttable presumption that attorney fees will be awarded to the prevailing party in all matters involving a contempt citation.

#### **LR89-FL00-18 : TERMINATION OF REPRESENTATIVE CAPACITY**

A. Representative Capacity Terminated. Upon the entry of final Decree of Dissolution of Marriage, Legal Separation, Paternity, or Order of permanent modification of any custody, parenting time and/or child support Order, the representative capacity of all attorneys appearing on behalf of any party shall be deemed terminated upon:

1. An order of withdrawal granted pursuant to local rule;
2. The expiration of time within which an appeal of such Order may be preserved or perfected pursuant to the Indiana Rules of Trial Procedure and/or the Indiana Rules of Appellate Procedure; or
3. The conclusion of any appeal of such Order commenced pursuant to Indiana Rules of

Trial Procedure and/or the Indiana Rules of Appellate Procedure.

The failure of the Clerk of Wayne County to remove the appearance of such attorney from the Chronological Case Summary upon the occurrence of one of the above shall not affect the application of this Rule.

B. Post-Decree Service. The service of any post-decree pleadings upon any party not represented by counsel pursuant to paragraph A above, despite the possible mistaken continued appearance of said attorney on the Chronological Case Summary, shall be made upon that person pursuant to Indiana Rules of Trial Procedure.

C. Courtesy Copy. Any copy served upon original counsel will be deemed to be a matter of professional courtesy only; however, such professional courtesy is encouraged, and if a courtesy copy of such petition is sent to a representative, whether terminated or not, such shall be shown on a certificate of service.

D. Termination of Appointment of Guardian Ad Litem. Upon the entry of final Decree of Dissolution of Marriage, Legal Separation, Paternity, or Order of permanent modification of any custody, parenting time and/or child support Order, the appointment of the Guardian Ad Litem shall be deemed terminated. The Guardian Ad Litem shall be under no continuing obligation to continue work on the matter unless otherwise ordered by the Court or reappointed in later proceedings.

## APPENDIX

- A. SUMMONS
- B. FINANCIAL DECLARATION FORM

**SUMMONS  
IN THE WAYNE COUNTY CIRCUIT AND SUPERIOR COURTS**

\_\_\_\_\_  
Husband/Father

and

Cause No. \_\_\_\_\_

\_\_\_\_\_  
Wife/Mother

TO: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

You are hereby notified that a proceeding for (Dissolution of Marriage) (Legal Separation) (Paternity) (Modification) has been initiated by (Husband/Father) (Wife/Mother) in the Court indicated above.

You must complete the attached Financial Declaration Form and submit it to the other party within thirty days after receipt of this Summons.

In any proceeding for Dissolution of Marriage with minor children, Legal Separation with minor children, or Paternity, you must register for one session of Helping Children Cope with Divorce within twenty days after receipt of this Summons. Failure to schedule and attend may result in sanctions. Information regarding said class is attached to this Summons.

If this Summons is accompanied by an Order to Appear or Notice of Hearing, you must appear in Court on the date and time stated in the Order to Appear or Notice of Hearing. If you do not appear, evidence may be heard in your absence and a determination made by the Court. If a Temporary Restraining Order is attached, it is effective immediately upon your receipt or knowledge of the Order.

If you wish to retain an attorney to represent you in this matter, it is advisable to do so before the date stated in the Order to Appear or Notice of Hearing. If you take no action in this case after receipt of this Summons, the Court can grant a (Dissolution of Marriage) (Legal Separation) (Decree of Paternity) or make a determination regarding any of the following: paternity, child custody, child support, maintenance, parenting time, real and/or personal property division, and any other distribution of assets and allocation of debts.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Clerk, Wayne County

The following manner of service of summons is designated:

☐ Registered or Certified Mail

☐ Service on Individual

☐ Service at place of employment, to-wit: \_\_\_\_\_

☐ Private Service

\_\_\_\_\_  
Party/Party's Attorney

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone No. \_\_\_\_\_

Wayne County Circuit and Superior Courts  
Wayne County Courthouse  
301 East Main Street  
Richmond, Indiana 47374  
765.973.9220

APPENDIX A

**SHERIFF'S RETURN OF SERVICE OF SUMMONS**

I hereby certify that I have served this summons on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_:

- (1) By delivering a copy of the Summons and a copy of the Petition.
- (2) By leaving a copy of the Summons and a copy of the Petition at the following address:

\_\_\_\_\_  
which is the dwelling place or usual place of abode and by mailing a copy of said Summons to the above address.

- (3) Other service or remarks: \_\_\_\_\_

\_\_\_\_\_  
Sheriff

By: \_\_\_\_\_  
Deputy

**CLERK'S CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I mailed a copy of this Summons and a copy of the Petition by \_\_\_\_\_ mail, requesting a return receipt, at the address furnished by the initiating party.

\_\_\_\_\_  
Clerk, Wayne County

By: \_\_\_\_\_  
Deputy

**RETURN OF SERVICE OF SUMMONS BY MAIL**

I hereby certify that the attached receipt was received by me showing that the Summons and a copy of the Petition was accepted by the party being served on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the Petition was returned not accepted on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the Petition was accepted by \_\_\_\_\_ on behalf of the party being served on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Clerk, Wayne County

By: \_\_\_\_\_  
Deputy

**ACKNOWLEDGMENT**

I hereby acknowledge that I have received this Summons and a copy of the Petition on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Printed:



## STATE OF INDIANA - COUNTY OF WAYNE

_____ Father/Husband	Cause No. _____ Dated: _____ FINANCIAL DECLARATION OF: _____ _____ Mother/Wife
-------------------------	--

<b>HUSBAND/FATHER:</b> Name: Address: SSN: Occupation: Employer: Date of Birth:	<b>MOTHER/WIFE:</b> Name: Address: SSN: Occupation: Employer: Date of Birth:
<b>ATTORNEY FOR HUSBAND/FATHER:</b> Name/Atty ID: Address: Phone/Fax: E-mail:	<b>ATTORNEY FOR WIFE/MOTHER:</b> Name/Atty ID: Address: Phone/Fax: E-mail:

Date of Marriage:

Date of Filing:

Children of this relationship:

Name	Date of Birth	SSN	Lives With

GROSS WEEKLY INCOME - ATTACH LAST THREE PAYROLL STUBS AND LAST THREE YEARS' TAX RETURNS	AMOUNTS
1. Gross Weekly SALARY, WAGES, and COMMISSIONS	
2. Gross Weekly - PENSION, RETIREMENT, SOCIAL SECURITY PAYMENTS	
3. Gross Weekly CHILD SUPPORT received from any prior marriage (not this marriage)	
4. Gross Weekly DIVIDENDS and INTEREST	
5. Gross Weekly RENTS/ROYALTIES less ordinary and necessary expenses (attach calculation)	
6. Gross Weekly BUSINESS/SELF-EMPLOYMENT INCOME less ordinary and necessary expenses (attach calculation)	
7. ALL OTHER SOURCES (Specify) *Includes: bonuses; alimony/maintenance received from prior marriages; capital gains; trust income; gifts; prizes; in-kind benefits from employment such as company car, free housing, reimbursed meals. DOES NOT INCLUDE government benefits.	
<b>8. TOTAL GROSS WEEKLY INCOME (Total of Lines 1 through 7)</b>	
9. Minus Weekly COURT ORDERED CHILD SUPPORT for prior children - amounts actually paid	
10. Minus Weekly LEGAL DUTY CHILD SUPPORT for prior children	
11. Minus Weekly HEALTH INSURANCE PREMIUMS for children of this marriage only	
12. Minus Weekly ALIMONY/SUPPORT/MAINTENANCE paid to prior spouses - amounts actually paid	
<b>13. WEEKLY AVAILABLE INCOME (Line 8 less Lines 9 through 12)</b>	
14. Weekly WORK RELATED CHILD CARE COSTS for custodial parent to work for children of this marriage only	
15. Weekly EXTRAORDINARY HEALTH CARE EXPENSES (children of this marriage only - uninsured only)	
16. Weekly EXTRAORDINARY EDUCATIONAL EXPENSES (children of this marriage only)	

Names and relationship of all members of household whose expenses are included:

**STOP if this is a post-decree modification or paternity action.**

MONTHLY EXPENSES AND DEDUCTIONS FROM INCOME			
1. FEDERAL INCOME TAXES			
2. STATE INCOME TAXES			
3. LOCAL INCOME TAXES			
4. SOCIAL SECURITY TAXES			
5. MEDICARE TAXES			
6. RETIREMENT/PENSION FUND (designate Mandatory/Optional)			
7. RENT/MORTGAGE PAYMENTS (Residence)			
8. RESIDENCE/PROPERTY TAXES/INSURANCE - If not included in mortgage payment			
9. MAINTENANCE ON RESIDENCE			
10. FOOD/HOUSEHOLD SUPPLIES/LAUNDRY/CLEANING			
11. ELECTRICITY			
12. GAS			
13. WATER/SEWER/SOLID WASTE/TRASH COLLECTION			
14. TELEPHONE (including long distance charges)			
15. CLOTHING			
16. MEDICAL/DENTAL EXPENSES (not reimbursed by insurance)			
17. AUTOMOBILE - LOAN PAYMENT			
18. AUTOMOBILE - GAS/OIL			
19. AUTOMOBILE - REPAIRS			
20. AUTOMOBILE - INSURANCE			
21. LIFE INSURANCE			
22. HEALTH INSURANCE (designate who is covered and exclude amount for children shown on page 1, line 11)			
23. DISABILITY/ACCIDENT/OTHER INSURANCE (specify)			
24. ENTERTAINMENT (clubs, social obligations, travel, recreation, cable television)			
25. CHARITABLE/CHURCH CONTRIBUTIONS			
26. PERSONAL EXPENSES (haircuts, cosmetics, grooming, tobacco, alcohol, etc.)			
27. BOOKS/MAGAZINES/NEWSPAPERS			
28. EDUCATION/SCHOOL EXPENSES (self and children of whom you have custody)			
29. DAY CARE/WORK RELATED CHILD CARE COSTS			
30. OTHER EXPENSES (specify)			
UNSECURED MONTHLY LOAN/CHARGE CARD EXPENSES (Do not include monthly payments shown above)	FOR	BALANCE	PAYMENT
31			
32			
33			
34			
35			
36			
37			
38			
39			
40. Total Monthly Expenses and Deductions from Income (Total of Lines 1 through 39)			
41. Average Weekly Expenses and Deductions (Total monthly expenses divided by 4.3)			

**ASSETS**

Disclose all assets known to you, even if you do not know the value. Under ownership, H = Husband; W = Wife; J = Joint. Lien amount includes only those debts secured by an item, such as a mortgage against a house, debts shown on title to vehicle, loans against life insurance policies or loans where an item is pledged as collateral. Value assets as of the date the Petition for Dissolution of Marriage was filed.

DESCRIPTION	GROSS VALUE	LESS: LIENS/MORTGAGES	NET VALUE	TITLE		
				H	W	J
<b>A. HOUSEHOLD FURNISHINGS/FURNITURE/APPLIANCES</b>						
In possession of Husband						
In possession of Wife						
<b>B. AUTOMOBILES, TRUCKS, RECREATIONAL VEHICLES</b> Include Make, Model, and Year						
<b>C. SECURITIES - STOCKS, BONDS, AND STOCK OPTIONS</b>						
<b>D. CASH, CHECKING, SAVINGS, DEPOSIT ACCTS, CDS</b> (Include name of bank/credit union and type of account)						
<b>E. REAL ESTATE (including sales contracts)</b>						
Marital residence (show address)						
Basis of Valuation: Name of lender first mortgage: Name of lender second mortgage:						
Other (show address)						
Basis of Valuation: Name of lender first mortgage: Name of lender second mortgage:						
Other (show address)						
Basis of Valuation: Name of lender first mortgage: Name of lender second mortgage:						

## ASSETS (CONTINUED)

DESCRIPTION	GROSS VALUE	LESS:	NET VALUE	TITLE		
		LIENS/MORTGAGES		H	W	J
<b>F. CASH RETIREMENT ACCOUNTS</b> (IRAs, SEPs, KEOUGHS, 401(k), employee savings plans, stock ownership/profit sharing plans, etc.)						
<b>G. RETIREMENT BENEFITS, DEFERRED COMPENSATION PLANS AND PENSIONS</b> (Include information available on benefits, whether benefits are vested or in pay status)						
<b>H. BUSINESS INTERESTS</b>						
<b>I. LIFE INSURANCE</b> (show company name and death benefit)						
<u>Term and Group</u>						
Named beneficiary:						
Named beneficiary:						
Named beneficiary:						
Named beneficiary:						
<u>Whole Life and Others</u> (show cash value under gross value)						
Named beneficiary:						
Named beneficiary:						
Named beneficiary:						
Named beneficiary:						
<b>J. OTHER ASSETS</b> Include any type of assets having value, including jewelry, personal property, assets located in safety deposit boxes, accrued bonuses, etc.						

**ASSETS ACQUIRED BY YOU PRIOR TO THE MARRIAGE OR THROUGH INHERITANCE OR GIFT**

(Whether now owned or not)

DESCRIPTION	GROSS VALUE	LESS: LIENS/MORTGAGES	NET VALUE	VALUATION DATE
<b>ASSETS OWNED BY YOU PRIOR TO MARRIAGE</b> (value as of date of marriage)				
<b>THROUGH INHERITANCE OR GIFTS</b> (value as of date of acquisition)				
Description:				
Acquired from whom:				
Description:				
Acquired from whom:				
Description:				
Acquired from whom:				

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT, THAT THIS DECLARATION WAS EXECUTED ON \_\_\_\_\_.

\_\_\_\_\_  
Party

**YOU MUST ATTACH DOCUMENTATION VERIFYING ALL DATA. YOU ARE UNDER A DUTY TO SUPPLEMENT OR AMEND THIS FINANCIAL DECLARATION FORM PRIOR TO TRIAL IF YOU LEARN THE INFORMATION PROVIDED IS INCORRECT OR NO LONGER TRUE.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was provided to the following by U.S. mail, postage prepaid, on \_\_\_\_\_:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attorney/Pro Se Party

## **WAYNE COUNTY RULES OF PROBATE**

Passed by Wayne County Bar Association Effective October 30, 1997.

Amended by Wayne County Bar Association Effective January 1, 2008.

The following Rules of Court, hereafter to be cited as "Local Probate Rules," are hereby adopted and the same shall become effective on and after the 1st day of November, 1997.

### **LR89-PR00-001 Notice**

1.1 Whenever notice by publication and/or written notice by U.S. Mail is required to be given, the attorney shall prepare such notice and shall give sufficient numbers of the same to the Clerk who shall ensure that such notice is properly published and/or served by Certified mail, return receipt requested, or First Class Mail, as required by the Statute. It shall also be the attorney's responsibility to provide the Clerk with addressed and stamped envelopes when notice is to be made by First Class Mail.

1.2 Copies of petitions shall be sent with all notices where the hearing involved arises from the matters contained in the petition.

1.3 On the filing with the Clerk by the personal representative or guardian of any petition, application, complaint, partial report, final report, or any report that requires fixing of date and place of hearing of same by the Court and giving notice thereof to any or all interested persons as required by law or order of the Court, the Clerk shall forthwith fix the date and place of hearing, by endorsement on the same, and shall give, for such personal representative or guardian, the required notice. The Clerk shall then also make and record on the proper order book on the date of the filing of such petition or report, an order by the court fixing the date and place of hearing of such petition or report, the same as fixed thereon by the Clerk, and directing the Clerk to give for the personal representative or guardian the required notice.

1.4 The Wayne County Scheduling Clerk will accept calendaring responsibilities concerning notification to all personal representatives and guardians of the due date of any statutorily required inventory or accounting. A copy of such notice of due date will be mailed to the attorney of record for the personal representative or guardian.

### **LR89-PR00-002 Filing of Pleadings**

2.1 Routine pleadings, such as Inventories, Inheritance Tax Schedules, and Final Reports, may be filed with the Clerk for transmittal to the Court.

2.2 All attorneys are required to prepare orders for all proceedings except when expressly directed otherwise by the Court.

2.3 Every pleading, including Inventories, Petitions, and Accountings, filed in an Estate or Guardianship, shall be signed and verified by the fiduciary and signed by the attorney for the fiduciary. Pleadings of a procedural nature only may be signed by only the attorney.

2.4 All pleadings filed shall contain the attorney's name, address, telephone number, and attorney's Registration Number.

2.5 The initial petition to open an Estate or Guardianship shall contain the name and address of the fiduciary.

2.5 The initial petition to open an Estate or Guardianship shall contain the name and address of the fiduciary.

### **LR89-PR00-003 Bond**

3.1 The filing of any bond for a Personal Representative shall be governed by Indiana Code 29-1-11-1 (or any subsequent recodification thereof).

3.2 The filing of any bond for a guardian shall be governed by Indiana Code 29-1-7-1 and 29-1-7-2 (or any subsequent recodification thereof).

3.3 In the event that a bond is requested or anticipated, the petition to open an estate or guardianship shall set forth the probable value of the personal property plus the estimated annual rents and profits to be derived from the property in the estate or guardianship.

### **LR89-PR00-004 Inventory**

4.1 An inventory shall be filed in duplicate by the fiduciary in all estates and guardianships, except unsupervised estates, within sixty (60) days; Guardianships within ninety (90) days for permanent guardians; and, within thirty (30) days for temporary guardians. All times relate to the appointment of the fiduciary.

4.2 In the event a partial inventory is filed, all subsequent inventories must contain a recapitulation of prior inventories.

### **LR89-PR00-005 Sale of Real Estate**

5.1 When a Petition to Sell Real Estate is filed in a supervised estate or guardianship, it shall be accompanied by a written appraisal prepared by a person qualified to appraise such property, setting forth the fair market value of said real estate, unless such an appraisal was previously filed with the Inventory.

5.2 All appraisals required by Rule 5.1 shall be made within one (1) year of the date of a Petition to Sell Real Estate.

5.3 In a supervised estate, whenever a Final Decree contains real estate located in any county other than Wayne County, the Decree or a Personal Representative's Deed shall be recorded with

the Recorder of the County in which any such real estate is located.

### **LR89-PR00-006 Sale of Personal Property**

6.1 In all supervised estates and guardianships, no Petition to Sell Personal Property shall be granted unless a written appraisal prepared by a person competent to appraise such property and setting forth the Fair Market Value thereof, is filed with the Court at the time of the filing of the Petition to Sell, unless such appraisal was filed with the Inventory.

6.2 All appraisals required by Rule 6.1 shall be made within one (1) year of the date of the Petition to Sell.

6.3 No written appraisal shall be required for the sale of assets which are traded in a market and the value of which is readily ascertainable. Such assets include, but are not limited to, stocks, bonds, mutual funds, commodities, and precious metals.

### **LR89-PR00-007 Claims**

7.1 Three (3) months and fifteen (15) days after the date of the first published notice to creditors, the fiduciary, or the fiduciary's attorney, shall examine the Claim Docket and shall allow or disallow each claim filed against the estate.

### **LR89-PR00-008 Accountings**

8.1 Accountings for estates must comply with Indiana Code 29-1-16.

8.2 All guardianship accounts shall contain a certification of an officer of any financial institution in which guardianship assets are held, verifying the account balance.

8.3 All Social Security or Medicare benefits received on behalf of an incapacitated person shall be included and accounted for in the guardianship accountings unless Court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility.

8.4 In all supervised estate and guardianship accountings, vouchers, canceled checks, bank statements, check images provided by the financial institution, or other evidence of expenditures acceptable to the Court for the expenditures claimed shall be filed with the accounting.

8.5 In all supervised estate and guardianship accountings, a notation shall be placed by each expenditure indicating the reason for or nature of the expenditure.

EXAMPLE:

Bogata Drugs - Prescription drugs



Dr. John Jones - Medical services

Sam Smith - repair roof of home at 162 Maple Street, Anytown, Indiana

Tendercare Nursing Home - Nursing home care

8.6 All accountings to the Court shall contain an itemized statement of the assets on hand.

8.7 Receipts, canceled checks, bank statements, check images provided by the financial institution, or other evidence acceptable to the Court for all final distributions shall be filed either in the final report, or a supplemental report, before discharge will be granted by the Court.

8.8 All accountings shall follow the prescribed statutory format. Informal, handwritten, or transactional accountings will not be accepted.

8.9 All Court costs shall be paid and all claims satisfied and released before the hearing on the Final Account and a Clerk's Certification thereof shall be filed with the Court before such Final Account shall be approved.

8.10 In those estates where no Indiana inheritance tax is due, the Affidavit required to be filed with the local Assessor's Office shall also be filed under the estate's caption and cause number with the Clerk of the Court.

#### **LR89-PR00-009 Fees of Attorney and Fiduciary**

9.1 No fees for fiduciaries or attorneys shall be approved in any supervised estate or guardianship until the Court has approved a fee petition filed by the attorney for the estate.

9.2 No attorney or of fiduciary fees will be determined and authorized for payment by the Court in any Unsupervised Administration of a decedent's estate.

9.3 Where contracts for legal services have been entered into prior or subsequent to the opening of an estate or guardianship, the Court reserves the right to approve or disapprove the fee contracts consistent with this Court's fee guidelines.

9.4 Rule 1.5 of the Rule of Professional Conduct has been adopted by the Supreme Court of Indiana to govern attorney fees. All fees charged by attorneys shall be reasonable. The rule further enumerates the factors to be considered, which are as follows:

(1) the time and labor required, the novelty and difficulty of questions involved, and the skills requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation and ability of the lawyer or lawyers performing the services.

The guidelines set forth in Appendix A to these rules are not to be used as a substitution for the attorney's determination of what a reasonable fee would be in a given situation. Rather, the guidelines are established to assist attorneys and fiduciaries by outlining what the Court will deem to be reasonable based upon the factors contained in Rule of Professional Conduct 1.5.

The basic guideline amounts are based upon usual and ordinary services. The guidelines also will assist in calculations of fees generated by the provisions of extraordinary services.

9.5 Unjustified delays in carrying out duties by the fiduciary and/or attorney may result in a reduction of fees.

### **LR89-PR00-010 Unsupervised Administration**

10.1 Any petition for unsupervised administration of an estate must comply with Indiana Code 29-1-7.5.

10.2 A verified Closing Statement filed in unsupervised administrations must comply with Indiana Code § 29-1-7.5-4, and must contain statements that the Personal Representative has completed the items set forth therein.

10.3 No Orders as to attorneys fees, compliance regarding notice of administration to decedent's creditor's, or other orders shall be entered by the Court in unsupervised estates except that the Court shall enter an Order approving the verified closing statement as required by Indiana Code § 29-1-7.5-4.

### **LR89-PR00-011 Guardianships**

11.1 In all guardianship matters seeking to declare an adult incapacitated for any reason, the incapacitated person shall be present at the hearing or sufficient evidence is presented to excuse the absence of the incapacitated person pursuant to Indiana Code 29-3-5-1.

11.2 In all guardianship matters seeking to declare an adult incapacitated for any reason, a Physician's Report by the doctor treating the alleged incapacitated person, or such evidence as

the Court shall require, shall be presented to the Court at the time the petition is filed or on the hearing date.

11.3 In every petition for the appointment of a guardian of the person of a minor child or an incapacitated adult, the petition shall contain the information required by Indiana Code 29-3-5.

11.4 Nothing herein shall be deemed as amending, superseding or altering the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States of America, and every fiduciary and attorney shall comply with same, if applicable.

11.5 In all estate and guardianship matters involving either a claim for wrongful death or personal injury, the civil case and the corresponding guardianship or probate proceedings will be filed in the same Court without regard to the usual computer filing system which governs the filing of all other actions.

#### **LR89-PR00-012 Miscellaneous**

12.1 (a) In those matters for which the Court has authority to grant an extension of time, the Court shall automatically grant one thirty (30) day extension upon the filing of a written petition on or before the otherwise applicable deadline.

(b) Any additional extension of time may be granted only upon the filing of an additional petition setting forth such good cause.

12.2 Procedure for past-due filings and reports:

(A) First Notice: A notice will be mailed to the attorney when the matter becomes past due.

(B) Second Notice: If there is no response within thirty (30) days of the mailing of the First Notice, a letter notice from the Court will be mailed requesting compliance within fifteen (15) days.

(C) Court Order: If there is no response within fifteen (15) days of the mailing of the Second Notice, a Court order to show cause will be issued. Both the attorney and fiduciary must appear at the date and time specified in the Court Order.

(Note: Rule 9.5 may be invoked in any of the above circumstances.)

12.3 In all probate matters, two (2) original orders shall be presented to the Clerk at the time of filing.

**APPENDIX A. Computation of Fees**  
**PROBATE EXHIBIT A**  
**COMPUTATION OF FEES**

ESTATE OF \_\_\_\_\_

PROBATE NO. \_\_\_\_\_

1. Inventories Value of Estate \$ \_\_\_\_\_

2. Income During Administration \$ \_\_\_\_\_

3. Assets Omitted from Inventory \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

4. Total Gross Estate - Federal Estate Tax \$ \_\_\_\_\_

**PERSONAL REPRESENTATIVE**

First \$100,000 - 5% \$ \_\_\_\_\_

Next \$200,000 - 4% \$ \_\_\_\_\_

Next \$700,000 - 2% \$ \_\_\_\_\_

Excess of \$1,000,000 - 1% \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

**ATTORNEY**

6% \$ \_\_\_\_\_

5% \$ \_\_\_\_\_

3% \$ \_\_\_\_\_

2% \$ \_\_\_\_\_

\$ \_\_\_\_\_

**ADDITIONAL FEES CLAIMED**

Personal Representative \$ \_\_\_\_\_

Attorney \$ \_\_\_\_\_

**EXPLANATION OF ADDITIONAL FEES CLAIMED:**

If additional fees are claimed, attach a detailed statement showing the nature of the services rendered, the time involved and the reasons why the same should generate additional fees. Please provide such additional information and supportive evidence as you think will enable the Court to weigh the claim for fees.

## ATTORNEY & PERSONAL REPRESENTATIVE FEE GUIDELINES

### I. Estate Administration:

Gross estate services are considered to normally include: probating the Will, opening the estate, qualifying the personal representative, preparing and filing the Inventory, paying claims, collecting assets, preparing and filing non-extraordinary petitions, assisting with and/or preparing and filing of Fiduciary Income Tax Return, assisting with and/or preparing and filing all tax returns and schedules, obtaining Court Orders thereon, and paying the taxes, preparing and filing the Final Report, obtaining Order approving same, distributing assets, obtaining discharge of the personal representative, and preparing and serving all notices on interested parties throughout the proceedings. The list shall not be considered to be exclusive.

#### A. Gross Estate - Minimum Fee of \$1,500.00

##### Attorney:

First \$100,000.00, not to exceed.....	6%
Next \$200,000.00, not to exceed.....	5%
Next \$700,000.00, not to exceed.....	3%
Excess of \$1,000,000.00, not to exceed.....	2%

##### Fiduciary:

First \$100,000.00, not to exceed.....	5%
Next \$200,000.00, not to exceed.....	4%
Next \$700,000.00, not to exceed.....	2%
Excess of \$1,000,000.00, not to exceed.....	1%

#### B. Miscellaneous - Extraordinary Services:

##### 1. Indiana Inheritance Tax Scheduled - (preparation and filing only) (To be applied only to non-administered property):

Attorney fees shall be three percent (3%) of the first \$100,000.00 of the non-administered assets of gross estate as determined for Indiana Inheritance Tax purposes, plus two percent (2%) of the next \$100,000.00 of the non-administered assets of the gross estate, plus one and one-half percent (1 ½%) of the next \$200,000.00 of the non-administered assets of the gross estate, plus one percent (1%) of all non-administered assets of the gross estate in excess of \$400,000.00. Personal Representative's fees for non-administered assets of the gross estate as determined for Indiana Inheritance Tax purposes shall be one-third (1/3) of the attorney fees for such non-administered assets.

##### 2. Federal Estate Tax Returns - (To be applied only to non-administered property, to be based only on assets not listed on Indiana Inheritance Tax Schedule).

A base attorney fee of .....\$750.00 or  
One percent (1%) of the first \$100,000.00 of the non-administered assets of the said gross estate  
as determined for Federal Estate Tax purposes,

PLUS, 3/4 of one percent (1%) of the next \$150,000.00 of non-administered assets of said gross  
estate,

PLUS, 1/2 of one percent (1%) on all non-administered assets of said gross estate in excess of  
\$250,000.00.

Personal Representative's fees shall be one-third (1/3) of attorney fees.

3. Other than as provided above.....Hourly Rate

(Attorney's expertise in probate matters will be considered by the Court in determining the  
applicable hourly rate)

## II. Wrongful Death Administration:

The Court recognizes that in most instances a retainer or contingent fee agreement is an  
appropriate method by which legal services can be provided in wrongful death claims.  
Accordingly, fees shall be allowed under such agreements if, at the time of settlement of the  
claim, it is shown to the Court's satisfaction:

1. That the Personal Representative was, prior to entering into such agreement, fully  
informed as to all aspects of the arrangement.
2. That the agreement is fair and reasonable.
3. That the fee sought is fair and reasonable.

## III. In General:

### A. Extraordinary Fee Requests

Fee petitions requesting extraordinary fees must set forth services rendered with  
specificity. Extraordinary services may include: sale of personal property, sale of real  
property, partial distribution, will contest actions, contesting claims, adjusting tax  
matters, contested hearings, petition for instructions, heirship determinations, generating  
additional income for the estate, etc. All such petitions will be set for hearing, with notice  
to all interested parties. If all interested parties sign a waiver and consent stating they  
have been advised the additional fee request exceeds the Court's guidelines and that the  
services as detailed are extraordinary, the Court may, in its discretion, determine if a  
hearing is required. An acceptable form of waiver is attached.

### B. Unsupervised Estates

The Court will not determine fees in an unsupervised administration.

#### IV. Guardianship Administration:

Fees for the administration of guardianships shall be based on an hourly rate to be approved by the Court for both the attorney and the guardian. The Court will consider the attorney's and guardian's expertise in approving the hourly rate.